

<b>Tab 1</b>	<b>CS/SB 298</b> by <b>CJ, Bracy</b> ; (Compare to CS/H 01065) Criminal History Records
<b>Tab 2</b>	<b>CS/SB 386</b> by <b>BI, Garcia (CO-INTRODUCERS) Taddeo</b> ; (Similar to CS/H 00239) Consumer Finance
<b>Tab 3</b>	<b>SB 478</b> by <b>Hukill</b> ; (Identical to H 00413) Trusts
<b>Tab 4</b>	<b>CS/SB 514</b> by <b>HP, Young</b> ; (Similar to CS/CS/H 00429) Transplant of Human Tissue
<b>Tab 5</b>	<b>CS/SB 906</b> by <b>HP, Young</b> ; (Similar to CS/CS/H 00551) Public Records/Health Care Facilities
<b>Tab 6</b>	<b>CS/SB 562</b> by <b>CA, Mayfield</b> ; (Similar to H 00627) Regulation of Smoking 362554—A            S   L   WD                            RC, Brandes                            Delete L.16 - 20:                            02/07 05:40 PM
<b>Tab 7</b>	<b>SB 670</b> by <b>Baxley (CO-INTRODUCERS) Bradley</b> ; (Similar to H 07035) Ratification of Rules of the St. Johns River Water Management District
<b>Tab 8</b>	<b>CS/SB 876</b> by <b>RI, Bean (CO-INTRODUCERS) Brandes</b> ; (Similar to CS/H 00539) Alarm Verification
<b>Tab 9</b>	<b>CS/SB 1598</b> by <b>JU, Passidomo</b> ; (Similar to CS/CS/H 01217) Deployed Parent Custody and Visitation 874598   D            S            RCS                            RC, Passidomo                            Delete everything after    02/07 05:48 PM
<b>Tab 10</b>	<b>CS/SB 416</b> by <b>BI, Thurston</b> ; (Similar to CS/CS/H 00455) Governance of Banks and Trust Companies
<b>Tab 11</b>	<b>SM 940</b> by <b>Rodriguez</b> ; (Similar to CS/H 00147) Puerto Rico
<b>Tab 12</b>	<b>CS/SB 8</b> by <b>HP, Benacquisto (CO-INTRODUCERS) Perry, Stargel, Bean, Passidomo</b> ; (Similar to CS/H 00021) Controlled Substances

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**  
**Senator Benacquisto, Chair**  
**Senator Braynon, Vice Chair**

**MEETING DATE:** Wednesday, February 7, 2018  
**TIME:** 4:00—5:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Benacquisto, Chair; Senator Braynon, Vice Chair; Senators Book, Bradley, Brandes, Flores, Galvano, Lee, Montford, Perry, Rodriguez, Simpson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 298</b> Criminal Justice / Bracy (Compare CS/H 1065, S 1142)	Criminal History Records; Revising the elements that must be attested to by a petitioner in a statement submitted in support of the expunction of a criminal history record; revising the elements that must be attested to by a petitioner in a statement submitted in support of the sealing of a criminal history record; revising the circumstances under which the Department of Law Enforcement must issue a certificate of eligibility for sealing of a criminal history record, etc.  CJ     10/23/2017 Fav/CS JU     01/25/2018 Favorable RC     02/07/2018 Favorable	Favorable Yeas 11 Nays 0
2	<b>CS/SB 386</b> Banking and Insurance / Garcia (Similar CS/H 239, Compare H 747, S 640)	Consumer Finance; Revising a provision relating to the maximum delinquency charge that may be charged for consumer finance loans; revising a requirement relating to installment repayments for consumer finance loans, etc.  BI     12/05/2017 Fav/CS CM     01/16/2018 Favorable RC     02/07/2018 Favorable	Favorable Yeas 11 Nays 0
3	<b>SB 478</b> Hukill (Identical H 413)	Trusts; Deleting a requirement that a trust and its terms be for the benefit of the trust's beneficiaries; revising provisions relating to notice or sending of trust documents to include posting on a secure electronic account or website; authorizing an authorized trustee to appoint all or part of the principal of a trust to a second trust under certain circumstances; clarifying that certain knowledge by a beneficiary does not cause a claim to accrue for breach of trust or commence the running of a period of limitations or laches, etc.  JU     01/10/2018 Favorable BI     01/30/2018 Favorable RC     02/07/2018 Favorable	Favorable Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 7, 2018, 4:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 514</b> Health Policy / Young (Similar CS/CS/H 429)	Transplant of Human Tissue; Requiring the Department of Health to develop and publish an educational pamphlet which contains certain information on the risks and benefits of transplants; requiring the department to notify physicians of the availability of the pamphlet, etc.  HP 01/23/2018 Fav/CS JU 01/30/2018 Favorable RC 02/07/2018 Favorable	Favorable Yeas 11 Nays 0
5	<b>CS/SB 906</b> Health Policy / Young (Similar CS/CS/H 551)	Public Records/Health Care Facilities; Providing an exemption from public records requirements for building plans, blueprints, schematic drawings, and diagrams held by an agency which depict the internal layout or structural elements of certain health care facilities; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  HP 01/16/2018 Fav/CS GO 01/30/2018 Favorable RC 02/07/2018 Favorable	Favorable Yeas 11 Nays 0
6	<b>CS/SB 562</b> Community Affairs / Mayfield (Similar H 627)	Regulation of Smoking; Authorizing municipalities and counties to further restrict smoking within the boundaries of certain public parks and designated facilities, etc.  CA 01/16/2018 Fav/CS HP 01/30/2018 Favorable RC 02/07/2018 Favorable	Favorable Yeas 10 Nays 1
7	<b>SB 670</b> Baxley (Similar H 7035)	Ratification of Rules of the St. Johns River Water Management District; Ratifying a specified rule relating to supplemental regulatory measures for the minimum flows and levels of Silver Springs, designated as an Outstanding Florida Spring under s. 373.802(4), F.S., for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to specified provisions which requires ratification of any rule meeting any specified thresholds of likely adverse impact or increase in regulatory costs, etc.  EP 01/09/2018 Favorable RC 02/07/2018 Favorable	Favorable Yeas 10 Nays 1

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 7, 2018, 4:00—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>CS/SB 876</b> Regulated Industries / Bean (Similar CS/H 539)	Alarm Verification ; Revising requirements for alarm verification to include additional methods by which an alarm monitoring company may verify a residential or commercial intrusion/burglary alarm signal and to require that two attempts be made to verify an alarm signal, etc.  RI 01/10/2018 Fav/CS CA 01/23/2018 Favorable RC 02/07/2018 Favorable	Favorable Yeas 11 Nays 0
9	<b>CS/SB 1598</b> Judiciary / Passidomo (Similar CS/H 1217)	Deployed Parent Custody and Visitation; Creating provisions entitled "Uniform Deployed Parents Custody and Visitation Act"; providing requirements for proceeding for custodial responsibility of a child of a servicemember; authorizing a court to grant caretaking authority or limited contact to a nonparent under certain conditions; providing for the termination of a grant of authority; authorizing a court to modify or terminate a temporary grant of custodial responsibility, etc.  JU 01/25/2018 Fav/CS MS 02/01/2018 Favorable RC 02/07/2018 Fav/CS	Fav/CS Yeas 11 Nays 0
10	<b>CS/SB 416</b> Banking and Insurance / Thurston (Similar CS/CS/H 455)	Governance of Banks and Trust Companies; Revising requirements relating to the financial institution experience of certain proposed directors and officers of a proposed bank or trust company; revising the residency requirement for certain directors of a bank or trust company; revising instances during which a bank may not own certain stock, obligations, and other securities, etc.  BI 01/10/2018 Not Considered BI 01/16/2018 Fav/CS CM 01/29/2018 Favorable RC 02/07/2018 Favorable	Favorable Yeas 11 Nays 0
11	<b>SM 940</b> Rodriguez (Similar CS/HM 147)	Puerto Rico; Urging Congress to apply law and policy in Puerto Rico without discrimination or inequality and to incorporate the Commonwealth of Puerto Rico into the United States, etc.  JU 01/30/2018 Favorable RC 02/07/2018 Favorable	Favorable Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, February 7, 2018, 4:00—5:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	<b>CS/SB 8</b> Health Policy / Benacquisto (Similar CS/H 21, Compare H 1159, S 458)	Controlled Substances; Prohibiting managed care plans and their fiscal agents or intermediaries from imposing certain requirements or conditions on recipients as a prerequisite to receiving medication- assisted treatment (MAT) services to treat substance abuse disorders; authorizing certain boards to require practitioners to complete a specified board-approved continuing education course to obtain authorization to prescribe controlled substances as part of biennial license renewal; authorizing disciplinary action against practitioners for violating specified provisions relating to controlled substances; prohibiting the dispensing of certain controlled substances in an amount that exceeds a 3-day supply or a medically necessary 7-day supply if certain criteria are met, etc.	Temporarily Postponed
		HP 01/10/2018 Workshop-Discussed HP 01/16/2018 Fav/CS AP 01/24/2018 Favorable RC 02/01/2018 Temporarily Postponed RC 02/07/2018 Temporarily Postponed	

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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 298

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Criminal History Records

DATE: February 6, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Storch</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 298 relaxes two of the numerous requirements that a person must meet to obtain a court-ordered expunction (destruction) of a criminal history record, and the bill similarly relaxes one of the many requirements for obtaining a court-ordered sealing of a criminal history record.

Under current law, a person is disqualified from obtaining a court-ordered expunction or sealing of a criminal history record if he or she, as a minor, was adjudicated to have committed specified misdemeanors that generally involve firearms, violence, or the mistreatment of children. Under the bill, the disqualification expires 10 years after the most recent adjudication of delinquency for one of those crimes.

Under current law, a person is also disqualified from obtaining a court order for the expunction of a criminal history record if the case to which the record relates went to trial. Under the bill, however, the occurrence of a trial does not disqualify the expunction of a related record as long as the trial resulted in a judgment of acquittal or a not-guilty verdict.

**II. Present Situation:**

**Overview**

The statutes set forth the processes for petitioning a court for an order to seal or expunge (destroy) a criminal history record. A criminal history record is “any nonjudicial record

maintained by a criminal justice agency containing criminal history information.”<sup>1</sup> Unless sealed or expunged, a criminal history record must be accessible to the public. And the term “record” refers not to any single document, but instead to all documents or other records of a particular arrest or incident.<sup>2</sup>

The processes for obtaining a court order to seal or expunge a criminal history record involve several steps and are largely similar. Regarding expungement only, a person must first obtain a certified statement demonstrating the person’s eligibility from the appropriate prosecutor’s office. Then, whether seeking expungement or sealing of a record, a person must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE). Finally, a person must file a petition with the court for an order to seal or expunge one of his or her records.

To successfully complete this process and receive a court order, a person must meet several requirements.

The court-ordered expunction of criminal history records is one of several methods by which a criminal history record may be expunged. Other methods of expunction set forth in the statutes include:

- Administrative, for records of arrests determined to have been made contrary to law or by mistake;<sup>3</sup>
- Juvenile diversion, for records of arrests of minors who complete a prearrest or postarrest diversion program;<sup>4</sup>
- Lawful self-defense, for records relating to a person who is later found to have acted in lawful self-defense;<sup>5</sup>
- Human trafficking, for records of offenses committed while the person was being victimized as part of a human trafficking scheme;<sup>6</sup>
- Automatic juvenile, for records of juvenile offenses as long as the person does not commit any serious offenses between age 18 and 26;<sup>7</sup> and
- Early juvenile, for records of juvenile offenses as long as the person does not commit any serious offenses between age 18 and 21.<sup>8</sup>

## **Court-Ordered Expunction of a Criminal History Record**

### ***Process for Obtaining Court-Ordered Expunction of a Criminal History Record***

To proceed toward a court-ordered expungement, a person must first obtain documents demonstrating his or her eligibility from the appropriate prosecutor’s office. Next, he or she must obtain a certificate of eligibility from the FDLE. To obtain a certificate of eligibility for expunction, a person must submit each of the following to the FDLE:

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<sup>1</sup> Section 943.0045(6), F.S.

<sup>2</sup> *See s.* 943.0585(17), F.S.

<sup>3</sup> Section 943.0581, F.S.

<sup>4</sup> Section 943.0582, F.S.

<sup>5</sup> Section 943.0585(5), F.S.

<sup>6</sup> Section 943.0583, F.S.

<sup>7</sup> Section 943.0515, F.S.

<sup>8</sup> Section 943.0515(1)(b)2., F.S.

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:
  - A charging document was not filed or issued in the case.
  - A charging document, if filed or issued in the case, was dismissed or prosecution was otherwise formally abandoned by the prosecutor, and that the charges that the person is seeking to expunge did not result in a trial.
  - The criminal history record does not relate to certain violations, which tend to be sex crimes or crimes involving the mistreatment of children.<sup>9</sup>
- A \$75 processing fee, unless it is waived by the executive director.
- A certified copy of the disposition of the charge.<sup>10</sup>

In addition, the applicant must not:

- Prior to the filing of the certificate of eligibility, have been adjudicated guilty of a criminal offense or comparable ordinance violation or have been adjudicated delinquent for committing certain felonies or misdemeanors involving violence, firearms, or the mistreatment of children;<sup>11</sup>
- Have been adjudicated as committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- Be under court supervision for the arrest or alleged criminal activity to which the petition pertains; or
- Have secured a prior sealing of a criminal history record, unless the expunction sought is of a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S.<sup>12</sup>

Upon receipt of a certificate of eligibility for expunction, the person must then petition the court for an order of expungement. Along with the certificate of eligibility, the petition must include a sworn statement attesting that the petitioner:

- Has never been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor involving violence, firearms or mistreatment of children;
- Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains;
- Has never secured a prior sealing or expunction of a criminal history record, unless the expunction is sought for a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S., and the record is otherwise eligible for expunction; and
- Is eligible for such an expunction and does not have any other petition to expunge or seal pending before any court.<sup>13</sup>

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<sup>9</sup> These violations include sexual misconduct, luring or enticing a child, sexual battery, procuring a person under 18 for prostitution, lewd or lascivious offenses committed in front of a minor, an elderly person, or a disabled person, voyeurism, violations of the Florida Communications Fraud Act, sexual abuse of a child, offenses by public officers and employees, acts in connection with obscenity and minors, child pornography, selling or buying of minors, drug trafficking, violation of pretrial detention, and any violation specified as a predicated offense for registration as a sexual predator pursuant to the Florida Sexual Predators Act. Section 943.0585(2)(a)3., F.S.

<sup>10</sup> Section 943.0585(2)(a)-(c), F.S.

<sup>11</sup> See s. 943.051(3)(b), F.S.

<sup>12</sup> Section 943.0585(2)(d)-(g), F.S.

<sup>13</sup> Section 943.0585(1)(b), F.S.



A copy of the completed petition to expunge is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the petition.<sup>14</sup> Finally, the court decides whether to grant the petition—a decision over which it has sole discretion.<sup>15</sup>

### ***Effect of Expunction of a Criminal History Record***

If the court grants a petition to expunge, the clerk of the court then certifies copies of the order to the appropriate state attorney or statewide prosecutor and the arresting agency. The arresting agency must provide the expunction order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the expunction order to the Federal Bureau of Investigation.<sup>16</sup>

Any record that the court orders expunged must be physically destroyed. The only exception is any record held by the FDLE, which must be maintained. The FDLE's record is confidential and exempt from disclosure requirements under the public records laws, and only a court order would make the record available to a person or entity that is otherwise excluded.<sup>17</sup>

The person who has their criminal history record expunged has the right to lawfully deny or fail to acknowledge arrests relating to the expunged records. However, several categories of persons are excepted from this right, including defendants in criminal cases, persons seeking certain position of trust with regard to children or the elderly, persons seeking to a law enforcement position, and candidates for admission to The Florida Bar.<sup>18</sup>

### **Court-ordered Sealing of a Criminal History Record**

#### ***Process for Obtaining Court-Ordered Sealing of a Criminal History Record***

To qualify for a court-ordered sealing, a person must first obtain documents demonstrating his or her eligibility from the appropriate prosecutor's office. Then, he or she must obtain a certificate of eligibility from the FDLE. To obtain a certificate of eligibility for sealing, the applicant must not:

- Prior to the date on which the application is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing certain felonies or misdemeanors generally involving violence, firearms, or the mistreatment of children;
- Have been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Have secured a prior sealing or expunction of a criminal history record; and

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<sup>14</sup> Section 943.0585(3)(a), F.S.

<sup>15</sup> Section 943.0585, F.S.

<sup>16</sup> Section 943.0585(3)(b), F.S.

<sup>17</sup> Section 943.0585(4), F.S.

<sup>18</sup> Section 943.0585(4)(a), F.S.

- Be under court supervision for the arrest or alleged criminal activity to which the petition to seal pertains.<sup>19, 20</sup>

Upon receipt of a certificate of eligibility for sealing, the person must then petition the court to seal the criminal history record. Along with the certificate of eligibility, the petitioner must include a sworn statement attesting that the petitioner:

- Has not previously been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor generally involving firearms, violence, or mistreatment of children;<sup>21</sup>
- Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction of a criminal history record; and
- Is eligible for such a sealing and does not have any other petition to seal or expunge pending before any court.<sup>22</sup>

A copy of the completed petition to seal is then served upon the appropriate prosecutor and the arresting agency, any of which may respond to the court regarding the petition.<sup>23</sup> There is no statutory right to a court-ordered sealing and any request for sealing of a criminal history record may be denied at the sole discretion of the court.<sup>24</sup>

### ***Effect of Sealing a Criminal History Record***

If the court grants a petition to seal, the clerk of the court then certifies copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency must provide the sealing order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the expunction order to the Federal Bureau of Investigation.<sup>25</sup> An order sealing a criminal history record does not require that record to be surrendered to the court. Additionally, the FDLE and other criminal justice agencies must continue to maintain the record.<sup>26</sup>

A person who has his or her criminal history record sealed may lawfully deny or fail to acknowledge arrests relating to the records that were sealed. However, several categories of persons are excepted from this right, including criminal defendants, persons seeking a position of trust in relation to vulnerable people such as the elderly and children, those attempting to buy a firearm from a licensed dealer, and candidates for The Florida Bar.<sup>27</sup>

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<sup>19</sup> Section 943.059(2)(c)-(f), F.S.

<sup>20</sup> The applicant must also submit to the FDLE a \$75 processing fee, unless waived by the executive director, and a certified copy of the disposition of the charge. Section 943.059(2)(a)-(b), F.S.

<sup>21</sup> See s. 943.051(3)(b), F.S.

<sup>22</sup> Section 943.059(1)(b), F.S.

<sup>23</sup> Section 943.059(3)(a), F.S.

<sup>24</sup> Section 943.059, F.S.

<sup>25</sup> Section 943.059(3)(b), F.S.

<sup>26</sup> Section 943.059(3)(e), F.S.

<sup>27</sup> Section 943.059(4)(a), F.S.

### **III. Effect of Proposed Changes:**

This bill relaxes two of the numerous requirements that a person must meet to obtain a court-ordered expunction (destruction) of a criminal history record, and the bill makes similar changes to one of the many requirements for obtaining a court-ordered sealing of such a record.

Under current law, a person is disqualified from obtaining a court-ordered expunction or sealing of a criminal history record if he or she, as a minor, was adjudicated to have committed specified misdemeanors that generally involve firearms, violence, or the mistreatment of children. Under the bill, the disqualification expires 10 years after the most recent adjudication of delinquency.

Under current law, a person is also disqualified from obtaining a court order for the expunction of one of his or her criminal history records if the case to which the record relates went to trial. Under the bill, however, the occurrence of a trial does not disqualify the expunction of a related record as long as the trial resulted in a judgment of acquittal or a not-guilty verdict.

The bill is effective July 1, 2018.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

This bill makes more people eligible to seek the court-ordered sealing or expunction of their criminal history records. As a result, there will likely be increases in judicial workloads to hear the petitions for sealing and expunction. Additionally, FDLE will likely incur increased costs for due to increases in the number of applications for a certificate of eligibility for court-ordered sealing or expunction of records.

According to FDLE's estimates for the original version of this bill, the bill will result in an additional 106,522 applications for a certificate of eligibility.<sup>28</sup> With an application fee of \$75, the additional applications will result in additional revenue to the agency of \$7,989,150. FDLE describes the costs to process these applications as follows:

There are 1,065,226 criminal history records that have an arrest that would be eligible to expunge a conviction for a misdemeanor from over 10 years ago.

If 10% of those eligible submitted an application, the application submissions would increase by 106,522. Based on this potential increase in applications, 150 additional FTE would be needed to handle various duties and responsibilities:

Positions requested include 1 Bureau Chief, 4 Senior Management Analyst Supervisor, 8 Operations and Management Consultant Manager, 2 Criminal Justice Information Consultant II, 10 Criminal Justice Information Consultant I, 105 Criminal Justice Information Analyst II, 10 Criminal Justice Information Analysts I, and 10 Criminal Justice Information Examiners.

It would cost \$9,612,004 in year one for salary, benefits, expense, and human resources services and \$9,048,754 in recurring years.

In addition, the increase in necessary positions will require obtaining additional office space to house the new members, as the FDLE headquarters building is currently at capacity. The cost associated with new space is yet to be determined.<sup>29</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 943.0585 and 943.059.

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<sup>28</sup> Florida Department of Law Enforcement, *2018 FDLE Legislative Bill Analysis for SB 298* (Oct. 17, 2017) (on file with the Senate Committee on Judiciary).

<sup>29</sup> *Id.*

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on October 23, 2017:**

The Committee Substitute:

- Clarifies that a person who has not been adjudicated delinquent of committing a specified misdemeanor offense in s. 943.051(3)(b), F.S., in the past 10 years is eligible to seek an expunction of a criminal history record; and
- Enables a person to be eligible to seek the sealing of a criminal history record if he or she has not been adjudicated delinquent for committing a specified misdemeanor generally involving firearms, violence, of the mistreatment of children in the previous 10 years.<sup>30</sup>

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>30</sup> See s. 943.051(3)(b), F.S., for a list of these offenses.

By the Committee on Criminal Justice; and Senator Bracy

591-00907-18

2018298c1

A bill to be entitled

An act relating to criminal history records; amending s. 943.0585, F.S.; revising the elements that must be attested to by a petitioner in a statement submitted in support of the expunction of a criminal history record; revising the circumstances under which the Department of Law Enforcement must issue a certificate of eligibility for expunction of a criminal history record; amending s. 943.059, F.S.; revising the elements that must be attested to by a petitioner in a statement submitted in support of the sealing of a criminal history record; revising the circumstances under which the Department of Law Enforcement must issue a certificate of eligibility for sealing of a criminal history record; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) and paragraphs (a) and (d) of subsection (2) of section 943.0585, Florida Statutes, are amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2) or subsection (5). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 order to expunge does not articulate the intention of the court  
 60 to expunge a record pertaining to more than one arrest. This  
 61 section does not prevent the court from ordering the expunction  
 62 of only a portion of a criminal history record pertaining to one  
 63 arrest or one incident of alleged criminal activity.  
 64 Notwithstanding any law to the contrary, a criminal justice  
 65 agency may comply with laws, court orders, and official requests  
 66 of other jurisdictions relating to expunction, correction, or  
 67 confidential handling of criminal history records or information  
 68 derived therefrom. This section does not confer any right to the  
 69 expunction of any criminal history record, and any request for  
 70 expunction of a criminal history record may be denied at the  
 71 sole discretion of the court.

72 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each  
 73 petition to a court to expunge a criminal history record is  
 74 complete only when accompanied by:

75 (b) The petitioner's sworn statement attesting that the  
 76 petitioner:

77 1. Has never, before ~~prior to~~ the date on which the  
 78 petition is filed, been adjudicated guilty of a criminal offense  
 79 or comparable ordinance violation, or been adjudicated  
 80 delinquent for committing any felony ~~or a misdemeanor specified~~  
 81 ~~in s. 943.051(3)(b).~~

82 2. Has not been adjudicated delinquent for committing a  
 83 misdemeanor offense specified in s. 943.051(3)(b) in the  
 84 previous 10 years.

85 ~~3.2-~~ Has not been adjudicated guilty of, or adjudicated  
 86 delinquent for committing, any of the acts stemming from the  
 87 arrest or alleged criminal activity to which the petition

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88 pertains.

89 ~~4.3-~~ Has never secured a prior sealing or expunction of a  
 90 criminal history record under this section, s. 943.059, former  
 91 s. 893.14, former s. 901.33, or former s. 943.058, unless  
 92 expunction is sought of a criminal history record previously  
 93 sealed for 10 years pursuant to paragraph (2)(h) and the record  
 94 is otherwise eligible for expunction.

95 ~~5.4-~~ Is eligible for such an expunction to the best of his  
 96 or her knowledge or belief and does not have any other petition  
 97 to expunge or any petition to seal pending before any court.  
 98

99 Any person who knowingly provides false information on such  
 100 sworn statement to the court commits a felony of the third  
 101 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 102 775.084.

103 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
 104 petitioning the court to expunge a criminal history record, a  
 105 person seeking to expunge a criminal history record shall apply  
 106 to the department for a certificate of eligibility for  
 107 expunction. The department shall, by rule adopted pursuant to  
 108 chapter 120, establish procedures pertaining to the application  
 109 for and issuance of certificates of eligibility for expunction.  
 110 A certificate of eligibility for expunction is valid for 12  
 111 months after the date stamped on the certificate when issued by  
 112 the department. After that time, the petitioner must reapply to  
 113 the department for a new certificate of eligibility. Eligibility  
 114 for a renewed certification of eligibility must be based on the  
 115 status of the applicant and the law in effect at the time of the  
 116 renewal application. The department shall issue a certificate of

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117 eligibility for expunction to a person who is the subject of a  
 118 criminal history record if that person:

119 (a) Has obtained, and submitted to the department, a  
 120 written, certified statement from the appropriate state attorney  
 121 or statewide prosecutor which indicates:

122 1. That an indictment, information, or other charging  
 123 document was not filed or issued in the case.

124 2. That an indictment, information, or other charging  
 125 document, if filed or issued in the case, was dismissed or nolle  
 126 prosequi by the state attorney or statewide prosecutor, or was  
 127 dismissed by a court of competent jurisdiction, that a judgment  
 128 of acquittal was rendered by a judge, or that a verdict of not  
 129 guilty was rendered by a judge or jury and that none of the  
 130 charges related to the arrest or alleged criminal activity to  
 131 which the petition to expunge pertains resulted in a trial,  
 132 without regard to whether the outcome of the trial was other  
 133 than an adjudication of guilt.

134 3. That the criminal history record does not relate to a  
 135 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 136 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,  
 137 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,  
 138 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,  
 139 or any violation specified as a predicate offense for  
 140 registration as a sexual predator pursuant to s. 775.21, without  
 141 regard to whether that offense alone is sufficient to require  
 142 such registration, or for registration as a sexual offender  
 143 pursuant to s. 943.0435, where the defendant was found guilty  
 144 of, or pled guilty or nolo contendere to any such offense, or  
 145 that the defendant, as a minor, was found to have committed, or

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146 pled guilty or nolo contendere to committing, such an offense as  
 147 a delinquent act, without regard to whether adjudication was  
 148 withheld.

149 (d) 1. Has never, ~~before~~ ~~prior~~ to the date on which the  
 150 application for a certificate of eligibility is filed, been  
 151 adjudicated guilty of a criminal offense or comparable ordinance  
 152 violation, or been adjudicated delinquent for committing any  
 153 felony ~~or a misdemeanor specified in s. 943.051(3)(b).~~

154 2. Has not been adjudicated delinquent for committing a  
 155 misdemeanor offense specified in s. 943.051(3)(b) in the  
 156 previous 10 years.

157 Section 2. Paragraph (b) of subsection (1) and paragraph  
 158 (c) of subsection (2) of section 943.059, Florida Statutes, are  
 159 amended to read:

160 943.059 Court-ordered sealing of criminal history records.-  
 161 The courts of this state shall continue to have jurisdiction  
 162 over their own procedures, including the maintenance, sealing,  
 163 and correction of judicial records containing criminal history  
 164 information to the extent such procedures are not inconsistent  
 165 with the conditions, responsibilities, and duties established by  
 166 this section. Any court of competent jurisdiction may order a  
 167 criminal justice agency to seal the criminal history record of a  
 168 minor or an adult who complies with the requirements of this  
 169 section. The court shall not order a criminal justice agency to  
 170 seal a criminal history record until the person seeking to seal  
 171 a criminal history record has applied for and received a  
 172 certificate of eligibility for sealing pursuant to subsection  
 173 (2). A criminal history record that relates to a violation of s.  
 174 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,



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175 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,  
 176 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,  
 177 s. 916.1075, a violation enumerated in s. 907.041, or any  
 178 violation specified as a predicate offense for registration as a  
 179 sexual predator pursuant to s. 775.21, without regard to whether  
 180 that offense alone is sufficient to require such registration,  
 181 or for registration as a sexual offender pursuant to s.  
 182 943.0435, may not be sealed, without regard to whether  
 183 adjudication was withheld, if the defendant was found guilty of  
 184 or pled guilty or nolo contendere to the offense, or if the  
 185 defendant, as a minor, was found to have committed or pled  
 186 guilty or nolo contendere to committing the offense as a  
 187 delinquent act. The court may only order sealing of a criminal  
 188 history record pertaining to one arrest or one incident of  
 189 alleged criminal activity, except as provided in this section.  
 190 The court may, at its sole discretion, order the sealing of a  
 191 criminal history record pertaining to more than one arrest if  
 192 the additional arrests directly relate to the original arrest.  
 193 If the court intends to order the sealing of records pertaining  
 194 to such additional arrests, such intent must be specified in the  
 195 order. A criminal justice agency may not seal any record  
 196 pertaining to such additional arrests if the order to seal does  
 197 not articulate the intention of the court to seal records  
 198 pertaining to more than one arrest. This section does not  
 199 prevent the court from ordering the sealing of only a portion of  
 200 a criminal history record pertaining to one arrest or one  
 201 incident of alleged criminal activity. Notwithstanding any law  
 202 to the contrary, a criminal justice agency may comply with laws,  
 203 court orders, and official requests of other jurisdictions

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204 relating to sealing, correction, or confidential handling of  
 205 criminal history records or information derived therefrom. This  
 206 section does not confer any right to the sealing of any criminal  
 207 history record, and any request for sealing a criminal history  
 208 record may be denied at the sole discretion of the court.

209 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each  
 210 petition to a court to seal a criminal history record is  
 211 complete only when accompanied by:

212 (b) The petitioner's sworn statement attesting that the  
 213 petitioner:

214 1. Has never, before ~~prior to~~ the date on which the  
 215 petition is filed, been adjudicated guilty of a criminal offense  
 216 or comparable ordinance violation, or been adjudicated  
 217 delinquent for committing any felony ~~or a misdemeanor specified~~  
 218 in s. 943.051(3)(b).

219 2. Has not been adjudicated delinquent for committing a  
 220 misdemeanor offense specified in s. 943.051(3)(b) in the  
 221 previous 10 years.

222 ~~3.2-~~ Has not been adjudicated guilty of or adjudicated  
 223 delinquent for committing any of the acts stemming from the  
 224 arrest or alleged criminal activity to which the petition to  
 225 seal pertains.

226 ~~4.3-~~ Has never secured a prior sealing or expunction of a  
 227 criminal history record under this section, s. 943.0585, former  
 228 s. 893.14, former s. 901.33, or former s. 943.058.

229 ~~5.4-~~ Is eligible for such a sealing to the best of his or  
 230 her knowledge or belief and does not have any other petition to  
 231 seal or any petition to expunge pending before any court.

232

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233 Any person who knowingly provides false information on such  
234 sworn statement to the court commits a felony of the third  
235 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
236 775.084.

237 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to  
238 petitioning the court to seal a criminal history record, a  
239 person seeking to seal a criminal history record shall apply to  
240 the department for a certificate of eligibility for sealing. The  
241 department shall, by rule adopted pursuant to chapter 120,  
242 establish procedures pertaining to the application for and  
243 issuance of certificates of eligibility for sealing. A  
244 certificate of eligibility for sealing is valid for 12 months  
245 after the date stamped on the certificate when issued by the  
246 department. After that time, the petitioner must reapply to the  
247 department for a new certificate of eligibility. Eligibility for  
248 a renewed certification of eligibility must be based on the  
249 status of the applicant and the law in effect at the time of the  
250 renewal application. The department shall issue a certificate of  
251 eligibility for sealing to a person who is the subject of a  
252 criminal history record provided that such person:

253 (c) 1. Has never, ~~before~~ ~~prior to~~ the date on which the  
254 application for a certificate of eligibility is filed, been  
255 adjudicated guilty of a criminal offense or comparable ordinance  
256 violation, or been adjudicated delinquent for committing any  
257 felony ~~or a misdemeanor specified in s. 943.051(3)(b).~~

258 2. Has not been adjudicated delinquent for committing a  
259 misdemeanor offense specified in s. 943.051(3)(b) in the  
260 previous 10 years.

261 Section 3. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Rules Committee

**Subject:** Committee Agenda Request

**Date:** January 25, 2018

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I respectfully request that **Senate Bill #298**, relating to Criminal History Records, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, reading "Randolph Bracy".

---

Senator Randolph Bracy  
Florida Senate, District 11

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.7.18

298

*Meeting Date*

*Bill Number (if applicable)*

Topic Criminal History Records

*Amendment Barcode (if applicable)*

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

*Street*

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

298

Bill Number (if applicable)

Topic Expunction of Criminal Arrest Records

Amendment Barcode (if applicable)

Name NANCY DANIELS

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Phone 850-488-6850

Street

Tallahassee

Fl

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA PUBLIC DEFENDER ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

Duplicate

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 386

INTRODUCER: Banking and Insurance Committee and Senator Garcia and others

SUBJECT: Consumer Finance

DATE: February 6, 2018      REVISED: \_\_\_\_\_

---

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2. <u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3. <u>Matiyow</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 386 allows consumer finance loans made pursuant to ch. 516, F.S., to be repaid in installments due every 2 weeks, semimonthly, or monthly. Currently, consumer finance loans may only be repaid in monthly installment payments. Additionally, the bill permits a borrower's final payment to be less than his or her prior installments, and sets a maximum delinquency charge, depending on the number of scheduled payments in a month.

**II. Present Situation:**

The Florida Office of Financial Regulation (OFR) regulates Florida-chartered banks, credit unions, finance companies, other financial institutions, and the securities industry.<sup>1</sup> The OFR's Division of Consumer Finance (division) licenses and regulates non-depository financial service industries and individuals and conducts examinations and complaint investigations of licensed entities to determine compliance with Florida law.<sup>2</sup>

The division regulates consumer finance loans under the Florida Consumer Finance Act, ch. 516, F.S. (the Act). A consumer finance loan, as compared to a traditional loan, is any loan valued at

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<sup>1</sup> Section 20.121(3)(a)2., F.S.

<sup>2</sup> Office of Financial Regulation, *Fast Facts*, p. 3 (4th ed. Dec. 2016), available at <http://www.flofr.com/StaticPages/documents/FastFacts.pdf>. See also, Office of Financial Regulation, *Welcome to the Division of Consumer Finance*, <https://www.flofr.com/StaticPages/DivisionOfConsumerFinance.htm> (last visited Jan. 12, 2018).

\$25,000 or less, with an interest rate greater than 18 percent per annum.<sup>3</sup> As of November 2017, 174 consumer finance loan companies are licensed at 361 locations in Florida.<sup>4</sup> The Act does not apply to banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.<sup>5</sup> Nor does the Act apply to pawn or title loans.<sup>6</sup> A common example of a consumer loan company is an automobile finance company; however, it is not a payday loan, title loan, or retail installment loan company.<sup>7</sup>

### Regulatory Restrictions on Consumer Finance Loans

A consumer finance loan may be secured or unsecured, but the Act prohibits lenders from taking a security interest in certain types of collateral.<sup>8</sup>

Consumer finance loans have a tiered interest rate structure such that the maximum interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent per annum computed on the first \$3,000;
- 24 percent per annum on principal above \$3,000 and up to \$4,000; and
- 18 percent per annum on principal above \$4,000 and up to \$25,000.<sup>9</sup>

This interest rate structure defines “original principal” as the “amount financed” as defined in the federal Truth in Lending Act (TILA)<sup>10</sup> and its implementing rule, “Regulation Z.”<sup>11</sup> Therefore, Florida law bases its maximum interest rates for consumer finance loans on the loan principal, minus any prepaid finance charges and any other required deposit balance.<sup>12</sup> Additionally, the interest rate must be computed based on simple interest.<sup>13</sup> If two or more interest rates are applied to a loan’s principal,<sup>14</sup> a lender may charge interest at a single annual percentage rate (APR) which would produce a total amount of interest that does not exceed the tiered interest

<sup>3</sup> Section 516.01(2), F.S.

<sup>4</sup> Email from OFR staff (Nov. 29, 2017) (on file with the Senate Committee on Banking and Insurance).

<sup>5</sup> Section 516.02(4), F.S.

<sup>6</sup> Office of Financial Regulation, *Welcome to the Division of Consumer Finance*, <https://www.flofr.com/StaticPages/DivisionOfConsumerFinance.htm> (last visited Jan. 12, 2018).

<sup>7</sup> Susan Ladika, *How Finance Companies Differ from Credit Cards, Banks* (May 29, 2015), available at <http://www.nasdaq.com/article/how-finance-companies-differ-from-credit-cards-banks-cm481759> (last visited Jan. 12, 2018).

<sup>8</sup> See s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than \$1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).

<sup>9</sup> Section 516.031(1), F.S. 30% is the maximum interest rate percentage per annum allowed under the Act.

<sup>10</sup> Codified at 15 U.S.C. § 1601 *et seq.*

<sup>11</sup> Currently, the statute references Truth in Lending Act’s (TILA) implementing regulations as “Regulation Z of the Board of Governors of the Federal Reserve System.” Section 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the “Dodd-Frank Act”, transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. See also Truth in Lending (Regulation Z), 76 CFR § 79768 (Dec. 22, 2011).

<sup>12</sup> “Amount financed” is the amount of the loan principal, less prepaid finance charges and any required deposit balance. 12 CFR §1026.18(b).

<sup>13</sup> Section 516.031(1), F.S.

<sup>14</sup> For example, on a principle amount of \$3,500, an interest rate of 30 percent per annum may be applied to \$3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining \$500 of the principal amount.

rate structure above.<sup>15</sup> The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its implementing regulations.<sup>16</sup>

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.<sup>17</sup>

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition of a loan's approval, except for the following permissible fees:

- Up to \$25 for investigating a borrower's credit and character;
- A \$25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- A delinquency charge of up to \$15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to \$20.<sup>18</sup>

A licensee may not divide a loan or allow a borrower to take on more than one loan from its business for the purpose of obtaining a greater finance charge than would otherwise be legal.<sup>19</sup>

A licensee may provide optional credit property, credit life, and disability insurance to the borrower, at his or her expense, via a deduction from the principal amount of the loan.<sup>20</sup>

A borrower must repay his or her consumer finance loan in monthly installments that are as nearly equal as mathematically practicable.<sup>21</sup>

### III. Effect of Proposed Changes:

The bill permits consumer finance loans made pursuant to ch. 516, F.S., to be repaid in installments due every 2 weeks, semimonthly, or monthly, rather than only monthly under current law. The bill requires that such a loan be repaid in periodic installments and allows the

<sup>15</sup> Section 516.031(1), F.S.

<sup>16</sup> Section 516.031(2), F.S.

<sup>17</sup> Section 516.031(5), F.S.

<sup>18</sup> Section 516.031(3), F.S.

<sup>19</sup> Section 516.031(4), F.S.

<sup>20</sup> Section 516.35(2), F.S.

<sup>21</sup> Section 516.36, F.S. This section does not apply to lines of credit.



final payment may be less than the amount of the prior installments. Lastly, the bill establishes the maximum delinquency charge for each payment in default at least 10 days:

- \$15 per default if one payment is due in a month.
- \$7.50 per default if two payments are due in a month.
- \$5.00 per default if three payments are due in a month.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Although the impact on the private sector is indeterminate, the bill may have a positive effect on the default rate of loans made pursuant to the Act. A member of the industry that operates in multiple states, but not Florida, conducted a study to determine the effect of a monthly repayment schedule compared to a biweekly or semimonthly repayment schedule.<sup>22</sup> In the study, return customers with a low-risk profile and high ability to repay were offered a single monthly payment option instead of a payment schedule every 2 weeks.<sup>23</sup> Customers on a monthly payment schedule had a default rate 25 percent higher than customers on biweekly and semimonthly payment schedules.<sup>24</sup>

If fewer defaults occur among borrowers who are placed on a payment schedule every 2 weeks or semimonthly, then the impact of the bill will be financially positive for both consumers and lenders.

##### **C. Government Sector Impact:**

None.

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<sup>22</sup> Email from representative of Oportun, (Nov. 17, 2017) (on file with the Senate Committee on Banking and Insurance).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 516.031 and 516.36 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on December 5, 2017:**

The CS:

- Removed the term “approximately equal” and clarified loans are to be repaid in periodic installments; and
- Established the maximum delinquency charge for each payment in default at least 10 days depending on the number of scheduled payments in a month:
  - \$15 per default if one payment is due in a month;
  - \$7.50 per default if two payments are due in a month;
  - \$5.00 per default if three payments are due in a month.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senators Garcia and Taddeo

597-01804-18

2018386c1

1 A bill to be entitled  
 2 An act relating to consumer finance; amending s.  
 3 516.031, F.S.; revising a provision relating to the  
 4 maximum delinquency charge that may be charged for  
 5 consumer finance loans; amending s. 516.36, F.S.;  
 6 revising a requirement relating to installment  
 7 repayments for consumer finance loans; providing an  
 8 effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Paragraph (a) of subsection (3) of section  
 13 516.031, Florida Statutes, is amended to read:  
 14 516.031 Finance charge; maximum rates.—  
 15 (3) OTHER CHARGES.—  
 16 (a) In addition to the interest, delinquency, and insurance  
 17 charges provided in this section, further or other charges or  
 18 amount for any examination, service, commission, or other thing  
 19 or otherwise may not be directly or indirectly charged,  
 20 contracted for, or received as a condition to the grant of a  
 21 loan, except:  
 22 1. An amount of up to \$25 to reimburse a portion of the  
 23 costs for investigating the character and credit of the person  
 24 applying for the loan;  
 25 2. An annual fee of \$25 on the anniversary date of each  
 26 line-of-credit account;  
 27 3. Charges paid for the brokerage fee on a loan or line of  
 28 credit of more than \$10,000, title insurance, and the appraisal  
 29 of real property offered as security if paid to a third party

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30 and supported by an actual expenditure;  
 31 4. Intangible personal property tax on the loan note or  
 32 obligation if secured by a lien on real property;  
 33 5. The documentary excise tax and lawful fees, if any,  
 34 actually and necessarily paid out by the licensee to any public  
 35 officer for filing, recording, or releasing in any public office  
 36 any instrument securing the loan, which may be collected when  
 37 the loan is made or at any time thereafter;  
 38 6. The premium payable for any insurance in lieu of  
 39 perfecting any security interest otherwise required by the  
 40 licensee in connection with the loan if the premium does not  
 41 exceed the fees which would otherwise be payable, which may be  
 42 collected when the loan is made or at any time thereafter;  
 43 7. Actual and reasonable attorney fees and court costs as  
 44 determined by the court in which suit is filed;  
 45 8. Actual and commercially reasonable expenses for  
 46 repossession, storing, repairing and placing in condition for  
 47 sale, and selling of any property pledged as security; or  
 48 9. A delinquency charge ~~of up to \$15~~ for each payment in  
 49 default for at least 10 days if the charge is agreed upon, in  
 50 writing, between the parties before imposing the charge.  
 51 Delinquency charges may be imposed as follows:  
 52 a. For payments due monthly, the delinquency charge for a  
 53 payment in default may not exceed \$15.  
 54 b. For payments due semimonthly, the delinquency charge for  
 55 a payment in default may not exceed \$7.50.  
 56 c. For payments due every 2 weeks, the delinquency charge  
 57 for a payment in default may not exceed \$7.50 if two payments  
 58 are due within the same calendar month, and may not exceed \$5 if

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59 three payments are due within the same calendar month.

60

61 Any charges, including interest, in excess of the combined total  
62 of all charges authorized and permitted by this chapter  
63 constitute a violation of chapter 687 governing interest and  
64 usury, and the penalties of that chapter apply. In the event of  
65 a bona fide error, the licensee shall refund or credit the  
66 borrower with the amount of the overcharge immediately but  
67 within 20 days after the discovery of such error.

68 Section 2. Section 516.36, Florida Statutes, is amended to  
69 read:

70 516.36 ~~Monthly~~ Installment requirement.—Every loan made  
71 pursuant to this chapter must ~~shall~~ be repaid in periodic  
72 ~~monthly~~ installments as nearly equal as mathematically  
73 practicable, except that the final payment may be less than the  
74 amount of the prior installments. Installments may be due every  
75 2 weeks, semimonthly, or monthly. This section does ~~shall~~ not  
76 apply to lines of credit.

77 Section 3. This act shall take effect July 1, 2018.



**The Florida Senate**  
State Senator René García  
36<sup>th</sup> District

Please reply to:

District Office:

1490 West 68 Street  
Suite # 201  
Hialeah, FL 33014  
Phone# (305) 364-3100

January 16<sup>th</sup>, 2018

The Honorable Lizbeth Benacquisto  
Chair, Rules Committee  
402 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

Please have this letter serve as my formal request to have **SB 386: Consumer finance** be heard during the next scheduled Committee on Rules Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García  
District 36

CC: John B. Phelps  
Cynthia Futch

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18  
Meeting Date

386  
Bill Number (if applicable)

Topic Consumer Finance

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

Tallahassee FL 32303  
City State Zip

Email alicevickers@flacp.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA Alliance for Consumer Protection

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 478

INTRODUCER: Senator Hukill

SUBJECT: Trusts

DATE: February 6, 2018

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
3.	<u>Stallard</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 478 amends the Florida Trust Code to ensure that the trust creator's or "settlor's" intent is paramount in trust interpretation, expand certain trustees' ability to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests, and further regulate the electronic provision of important trust documents.

The bill provides that the settlor's intent as paramount in trust interpretation. Historically, a trust was administered with the primary intent of accomplishing the intent of the settlor. Recent changes to trust law may be interpreted to require the administration of a trust for the benefit of the beneficiaries instead. This bill deletes language related to benefiting the beneficiaries and thus makes the intent of the settlor the primary intent of trust administration.

The bill provides that a beneficiary's actual knowledge that he or she has not received a trust accounting is not sufficient to begin the running of any limitations or laches period. Thus, the bill provides a longer period during which a beneficiary may hold a trustee responsible for a past-due accounting.

The bill also expands the state's decanting statute. Decanting is a trustee's power to cure or avoid issues with a trust by distributing trust property from one trust to a second trust, as opposed to distributing property directly to a beneficiary. The bill:

- Expands a trustee's ability to decant trust principal under the terms of the trust;
- Provides support for disabled beneficiaries; and
- Imposes greater notice requirements when a trustee exercises the ability to decant trust principal.

Finally, the bill includes several provisions to further regulate a trustee's providing documents to a beneficiary solely by posting them to a website or electronic account. These provisions include a requirement that the authorization signed by the recipient allowing documents to be

electronically delivered specifically indicate whether a trust accounting, trust disclosure statement, or limitation notice will be posted in this way. Also, the bill lengthens the timeframe during which a document provided solely through electronic posting must remain accessible to the recipient at the website or electronic account.

## II. Present Situation:

### Trusts in General

A trust is a legal instrument, into which a “settlor” places property in the care of a “trustee,” who administers the property according to the terms of the trust for the benefit of one or more “beneficiaries.” For example, a father might place \$100,000 in trust for the benefit of his children, the proceeds to be used only for their education, and appoint the father’s certified financial planner as the trustee.

### Interpretive Principles for Trusts

A trust, like any other legal document, may be ambiguous at one or more points. Ambiguous trust language can lead to lawsuits where two persons with an interest in the trust interpret the language differently. In resolving the meaning of ambiguous trust language in these cases, it is a settled matter of this state’s case law that “the polestar of trust interpretation is the settlors’ intent.”<sup>1</sup>

However, two statutes require trusts to be “for the benefit of the trust’s beneficiaries.”<sup>2</sup> Members of the Real Property, Probate, and Trust Law Section of the Florida Bar are concerned that courts, influenced by relevant law review articles, might appropriate these statutory provisions as an interpretive principle.<sup>3</sup> Thus, the concern is that the settlor’s-intent principle of trust interpretation might be moderated or even replaced by a benefit-of-the-beneficiaries principle.

### Trust “Decanting”

Under certain circumstances, a trustee may invade the corpus, or principal, of a trust to make distributions to a person. Similarly, under certain circumstances a trustee may instead place trust principal into another trust, which is often called “decanting.” A trustee who has been granted the “absolute power” to invade the principal of a trust in order to give it to one or more persons may instead place the trust principal into a second trust if:<sup>4</sup>

- The beneficiaries of the second trust are only those of the first trust; and
- The second trust does not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.

Additionally, if any contributions to the first trust qualified for a specified deduction for certain federal tax purposes, the trustee may decant only if the second trust does not contain any

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<sup>1</sup> E.g., *L’Argent v. Barnett Bank, N.A.*, 730 So.2d 395, 397 (Fla.2d DCA 1999).

<sup>2</sup> Sections 736.0105(2)(c) and 736.0404, F.S.

<sup>3</sup> Trust Law Committee, Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper: Proposed Revisions to ss. 736.0103, 736.0105 and 736.0404, Florida Statutes* (2017) (on file with the Senate Committee on Judiciary)

<sup>4</sup> Section 736.04117(1)(a), F.S.



provision that, if contained in the first trust, would have prevented it from qualifying for the reduction, or would have decreased the size of the deduction.<sup>5</sup>

### **Statute of Limitations on Actions Against a Trustee**

The law requires a trustee to give an accounting for the trust to its beneficiaries.<sup>6</sup> Failure to give an accounting constitutes an actionable breach of trust.<sup>7</sup> Current law, however, is not clear as to when the statute of limitations begins to run on a claim for a failure to account when the beneficiary is aware of the failure. Moreover, some believe that a 2015 appellate court opinion improperly truncated the period of limitations for bringing an action by a beneficiary for a trustee's failure to provide an accounting.<sup>8</sup>

### **Providing Documents and Notices Electronically**

The Florida Trust Code requires trustees and others to provide each other several documents. For example, trustees must provide trust accounting documents to beneficiaries. One permissible method of sending these documents is by posting them to a secure electronic account or website. This method of sending, posting, and sharing of documents is subject to special requirements.<sup>9</sup> These requirements appear to be intended to place recipients on clear notice of what specific documents will be provided electronically, how the recipient will be able to access the documents, and the time period in which the documents will be electronically accessible.

## **III. Effect of Proposed Changes:**

### **Protecting Settlor's Intent (Sections 1, 2, and 4)**

Section 1 amends s. 736.0103, F.S., to clarify that the "interests of the beneficiaries of a trust" means the beneficial interests *intended by the settlor* as provided in the terms of the trust. The bill deletes provisions of the Florida Trust Code which require that every trust and trust term be for the "benefit of the trust's beneficiaries." The Real Property, Probate, and Trust Law Section of The Florida Bar has recommended this change to ensure that courts will not look to this language as setting forth an interpretive principle for ambiguous trust terms. Sections 2 and 4 make analogous change to ss. 736.0105 and 736.0404, F.S.

### **Trust "Decanting" (Section 5)**

The bill extensively amends s. 736.04117, F.S., pertaining to the decanting of trusts. Decanting a trust, in very general terms, involves a trustee taking the principal of a trust and putting it into one or more other trusts.

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<sup>5</sup> Section 736.04117(1)(a)3., F.S.

<sup>6</sup> Section 736.0813, F.S.

<sup>7</sup> See s. 735.1001(1)-(2), F.S.

<sup>8</sup> The 2015 Opinion is that in *Corya v. Sanders*, 155 So.3d 1279 (Fla. 4th DCA 2015).

<sup>9</sup> See s. 736.0109(3), F.S.

*“Absolute Power” Not Necessary to Decant*

Under current law, decanting may only be done by one who is expressly given “absolute power” to make principal distributions from the first trust. The bill creates a new type of trustee, called an “authorized trustee,”<sup>10</sup> who may invade trust assets under the conditions set forth in the bill. The bill allows an authorized trustee with absolute power to invade the trust’s principal to appoint<sup>11</sup> all or part of the principal of the trust to a second trust if the beneficiaries of the second trust include only beneficiaries of the first trust and the second trust does not reduce any vested interest.<sup>12</sup> The second trust may:

- Retain a power of appointment granted in the first trust;
- Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;
- Create or modify a power of appointment if the power holder is a current beneficiary of the first trust;
- Create or modify a power of appointment if the power holder is a beneficiary of the first trust who is not a current beneficiary, but the exercise of the power of appointment may take effect only after the power holder becomes, or would have become if then living, a current beneficiary of the first trust; and
- Extend the term of the second trust beyond the term of the first trust.

The bill allows the class of permissible appointees in favor of which a created or modified power of appointment may be exercised may differ from the class identified in the first trust.

An authorized trustee who has non-absolute power under the first trust to distribute trust principal to a beneficiary may instead distribute that principal to one or more second trusts. However, if such authorized trustee exercises this power:

- The second trusts, in the aggregate, must grant each beneficiary of the first trust substantially similar interests as they had under the first trust;
- If the first trust grants a power of appointment to a beneficiary of the first trust, the second trust shall grant such power of appointment in the second trust to such beneficiary, and the class of permissible appointees shall be the same as in the first trust; and
- If the first trust does not grant a power of appointment to a beneficiary of the first trust, then the second trust may not grant a power of appointment in the second trust to such beneficiary.

The bill allows the second trust to extend beyond the term of the first trust. During the extended period, the second trust may give the trustee absolute power to invade the trust and may expand the class of permissible appointees.

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<sup>10</sup> The bill defines “authorized trustee” as a trustee, other than the settlor or a beneficiary, who has the power to invade the principal of a trust.”

<sup>11</sup> The power of appointment is the authority to designate recipients of beneficial interests in property.

<sup>12</sup> “Vested interest” is “a current unconditional right to receive a mandatory distribution of income, a specified dollar amount, or a percentage of value of a trust, or a current unconditional right to withdraw income, a specified dollar amount, or a percentage of value of a trust, which right is not subject to the occurrence of a specified event, the passage of a specified time, or the exercise of discretion.”

### ***Authority of Authorized Trustee to Decant to Special Needs Trust***

Even if an authorized trustee does not have absolute authority or does not have general authority to decant, the authorized trustee may be able to decant trust principal to a special needs trust. A special needs trust, very generally, is a one into which money can be placed for the benefit of a disabled person, permitting the person to maintain welfare eligibility, which might be lost if he or she were to hold the money outright.

### ***Prohibited Distributions***

The bill prohibits distributions from a trust that would prevent a contribution to a trust from qualifying for various federal tax deductions and exclusions.

### ***Notice of Decanting***

Under current law, a trustee who intends to decant must first give notice to the persons specified in statute. Under the bill, this notice must include a copy of the trust document for any second trust into which the principal from the first trust is to be placed.

The bill provides that a power to invade principal does not allow a trustee to increase the trustee's compensation or relieve the trustee from liability for breach of trust.

### **Statute of Limitations on Actions Against Trustee (Section 7)**

Trustees are required to give an accounting for the trust to the beneficiaries.<sup>13</sup> Failure to give an account constitutes an actionable breach of trust.<sup>14</sup> In an action for a breach of trust based on the failure to provide an accounting, an issue that may arise is the applicable limitations period for bringing the action. The bill amends s. 736.1008(3), F.S., to state that a beneficiary's actual knowledge that he or she has not received a trust accounting is not sufficient to begin the running of the limitations period, which under current law would be 4 years from the date the beneficiary acquired the actual knowledge in question. Thus, the limitations periods set forth in existing s. 736.1008(6), F.S., which depending upon the circumstances may span several decades, would appear to govern how long a beneficiary has to bring such an action. The change is in response to the *Corya* decision that essentially held that a person's actual knowledge merely that he or she is a beneficiary and that he or she has not received an accounting is sufficient to begin the running of the 4-year limitations period.<sup>15</sup>

### **Providing Documents and Notices Electronically (Section 3)**

The Florida Trust Code requires trustees and others to provide each other various documents. For example, trustees must provide trust accounting documents to beneficiaries. One permissible method of sending these documents is by posting them to a secure electronic account or website. This method of sending, posting, and sharing of documents is subject to special requirements

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<sup>13</sup> Section 736.0813, F.S.

<sup>14</sup> See s. 736.1001(1)-(2), F.S.

<sup>15</sup> Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper: Proposed amendments of ss. 736.08135 and 736.1008, F.S., to clarify the period for which beneficiaries may compel trust accountings* (2017) (on file with the Senate Committee on Judiciary).

under the law.<sup>16</sup> The bill amends the requirements as to documents that are provided to recipients *solely* through electronic posting and deemed sent for the purposes of the statute regulating methods of notice and waiver of notice.<sup>17</sup>

The bill provides that before documents can be posted on an electronic account, the recipient must sign an authorization solely for the purpose of allowing electronic posting. The authorization must specifically indicate whether a trust accounting, trust disclosure document, or limitation notice may be posted electronically and must generally indicate the other types of documents that will be posted. The bill provides that if a document is sent solely through electronic posting, the sender must comply with the law regarding electronic posting and has the burden of proving compliance if there is a dispute.

The bill modifies the timeframe during which a document provided solely through electronic posting must remain accessible to the recipient at the website or electronic account. Under current law, the period is 4 years from the date on which the document is deemed received. Under the bill, the recipient must be able to access and print or download these documents until the earlier of this date or 4 years after the date on which the recipient's access is terminated.<sup>18</sup>

Finally, if any recipient's access to the electronic account or website is terminated by the sender less than 4 years after the date the document was deemed received, the specified limitations periods in the trust limitations statute<sup>19</sup> are tolled for any information "adequately disclosed in a document sent solely by electronic posting." Particularly, this tolling begins on the date the recipient's access was terminated by the sender and continues until 45 days after the sender provides notice of the termination by means other than electronic posting. The limitations periods are further tolled if after the electronic access is terminated, the person entitled to documents makes a request for documents to be provided by means other than electronic means. These provisions appear designed to mitigate the negative effect that the termination of access may have on the recipient's interests.

### **Other Provisions (Sections 6, 8)**

Section 6 amends s. 736.08135, F.S., to provide that the provisions detailing the form and content of a trust accounting does not affect the beginning period from which a trustee is required to render a trust accounting.

Section 8 provides that the changes to ss. 736.1008 and 736.08135, F.S., are remedial and intended to clarify existing law and apply retroactively.

### **Effective Date (Section 9)**

The bill takes effect July 1, 2018.

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<sup>16</sup> See s. 736.0109(3), F.S.

<sup>17</sup> Section 736.0109, F.S.

<sup>18</sup> The termination of access does not invalidate the notice of sending of any document previously posted in accordance with s. 736.0109, F.S.

<sup>19</sup> Section 736.1008(1),(2), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Section 8 of the bill states:

The changes to ss. 736.08135 and 736.1008, Florida Statutes, made by this act are intended to clarify existing law, are remedial in nature, and apply retroactively to all cases pending or commenced on or after July 1, 2018.

However, the Supreme Court has found that “[j]ust because the Legislature labels something as remedial . . . does not make it so.”<sup>20</sup> Accordingly, legislation that is labeled as remedial or procedural may instead be substantive. Regardless, legislation may not be applied retroactively if it “impairs vested rights, creates new obligations, or imposes new penalties.”<sup>21</sup> Therefore, if a court found that section 6 or 7 of the bill did any of these prohibited things, the court would have to reject any retroactive application of these provisions.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Under the bill, beneficiaries will have more time to file legal actions against trustees. Also, those entitled to receive trust documents electronically will have longer time periods to file legal actions related to those documents. Accordingly, the bill appears to increase the risk, and thus the associated potential costs, taken on by trustees.

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<sup>20</sup> *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1955).

<sup>21</sup> *See id.*

**C. Government Sector Impact:**

The Office of the State Courts Administrator has not provided its analysis of the impact of the bill on judicial workloads.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 736.0103, 736.0105, 736.0109, 736.0404, 736.04117, 736.08135, and 736.1008.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Hukill

14-00174B-18

2018478\_\_

1 A bill to be entitled  
 2 An act relating to trusts; amending s. 736.0103, F.S.;  
 3 redefining the term "interests of the beneficiaries";  
 4 amending s. 736.0105, F.S.; deleting a requirement  
 5 that a trust and its terms be for the benefit of the  
 6 trust's beneficiaries; amending s. 736.0109, F.S.;  
 7 revising provisions relating to notice or sending of  
 8 trust documents to include posting on a secure  
 9 electronic account or website; providing requirements  
 10 for such documents to be deemed sent; requiring a  
 11 certain authorization to specify documents subject to  
 12 electronic posting; revising requirements for a  
 13 recipient to electronically access such documents;  
 14 prohibiting the termination of a recipient's  
 15 electronic access to such documents from invalidating  
 16 certain notice or sending of electronic trust  
 17 documents; tolling specified limitations periods under  
 18 certain circumstances; providing requirements for  
 19 electronic access to such documents to be deemed  
 20 terminated by a sender; providing construction;  
 21 providing applicability; amending s. 736.0404, F.S.;  
 22 deleting a restriction on the purpose for which a  
 23 trust is created; amending s. 736.04117, F.S.;  
 24 defining and redefining terms; authorizing an  
 25 authorized trustee to appoint all or part of the  
 26 principal of a trust to a second trust under certain  
 27 circumstances; providing requirements for the second  
 28 trust and its beneficiaries; authorizing the second  
 29 trust to retain, omit, or create or modify specified

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30 powers; authorizing the term of the second trust to  
 31 extend beyond the term of the first trust; authorizing  
 32 the class of permissible appointees to the second  
 33 trust to differ from the class identified in the first  
 34 trust under certain circumstances; providing  
 35 requirements for distributions to a second trust when  
 36 the authorized trustee does not have absolute power;  
 37 providing requirements for such second trust;  
 38 providing requirements for grants of power of  
 39 appointment by the second trust; authorizing a second  
 40 trust created by an authorized trustee without  
 41 absolute power to grant specified powers under certain  
 42 circumstances; authorizing an authorized trustee to  
 43 appoint the principal of a first trust to a  
 44 supplemental needs trust under certain circumstances;  
 45 providing requirements for such supplemental needs  
 46 trust; prohibiting an authorized trustee from  
 47 distributing the principal of a trust in a manner that  
 48 would reduce specified tax benefits; prohibiting the  
 49 distribution of S corporation stock from a first trust  
 50 to a second trust under certain circumstances;  
 51 prohibiting a settlor from being treated as the owner  
 52 of a second trust if he or she was not treated as the  
 53 owner of the first trust; prohibiting an authorized  
 54 trustee from distributing a trust's interest in  
 55 property to a second trust if the interest is subject  
 56 to specified rules of the Internal Revenue Code;  
 57 authorizing the exercise of power to invade a trust's  
 58 principal to apply to a second trust created or

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59 administered under the law of any jurisdiction;  
 60 prohibiting the exercise of power to invade a trust's  
 61 principal to increase an authorized trustee's  
 62 compensation or relieve him or her from certain  
 63 liability; specifying who an authorized trustee must  
 64 notify when he or she exercises his or her power to  
 65 invade the trust's principal; specifying the documents  
 66 that the authorized trustee must provide with such  
 67 notice; amending s. 736.08135, F.S.; revising  
 68 applicability; amending s. 736.1008, F.S.; clarifying  
 69 that certain knowledge by a beneficiary does not cause  
 70 a claim to accrue for breach of trust or commence the  
 71 running of a period of limitations or laches;  
 72 providing legislative intent; providing retroactive  
 73 application; providing effective dates.

74 Be It Enacted by the Legislature of the State of Florida:

75 Section 1. Subsection (11) of section 736.0103, Florida  
 76 Statutes, is amended to read:

77 736.0103 Definitions.—Unless the context otherwise  
 78 requires, in this code:

79 (11) "Interests of the beneficiaries" means the beneficial  
 80 interests intended by the settlor as provided in the terms of a  
 81 ~~the~~ trust.

82 Section 2. Paragraph (c) of subsection (2) of section  
 83 736.0105, Florida Statutes, is amended to read:

84 736.0105 Default and mandatory rules.—

85 (2) The terms of a trust prevail over any provision of this  
 86  
 87

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88 code except:

89 (c) ~~The requirement that a trust and its terms be for the~~  
 90 ~~benefit of the trust's beneficiaries, and that the trust have a~~  
 91 ~~purpose that is lawful, not contrary to public policy, and~~  
 92 ~~possible to achieve.~~

93 Section 3. Subsections (1) and (3) of section 736.0109,  
 94 Florida Statutes, are amended to read:

95 736.0109 Methods and waiver of notice.—

96 (1) Notice to a person under this code or the sending of a  
 97 document to a person under this code must be accomplished in a  
 98 manner reasonably suitable under the circumstances and likely to  
 99 result in receipt of the notice or document. Permissible methods  
 100 of notice or for sending a document include first-class mail,  
 101 personal delivery, delivery to the person's last known place of  
 102 residence or place of business, ~~or~~ a properly directed facsimile  
 103 or other electronic message, or posting on a secure electronic  
 104 account or website in accordance with subsection (3).

105 (3) A document that is sent solely by posting on an  
 106 electronic account or website is not deemed sent for purposes of  
 107 this section unless the sender complies with this subsection.  
 108 The sender has the burden of proving compliance with this  
 109 subsection ~~In addition to the methods listed in subsection (1)~~  
 110 ~~for sending a document, a sender may post a document to a secure~~  
 111 ~~electronic account or website where the document can be~~  
 112 ~~accessed.~~

113 (a) ~~Before a document may be posted to an electronic~~  
 114 ~~account or website,~~ The recipient must sign a separate written  
 115 authorization solely for the purpose of authorizing the sender  
 116 to post documents on an electronic account or website before

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117 such posting. The written authorization must:

118 1. Specifically indicate whether a trust accounting, trust  
 119 disclosure document, or limitation notice, as those terms are  
 120 defined in s. 736.1008(4), will be posted in this manner, and  
 121 generally enumerate the other types of documents that may be  
 122 posted in this manner.

123 2. Contain specific instructions for accessing the  
 124 electronic account or website, including the security procedures  
 125 required to access the electronic account or website, such as a  
 126 username and password.

127 3. Advise the recipient that a separate notice will be sent  
 128 when a document is posted on ~~to~~ the electronic account or  
 129 website and the manner in which the separate notice will be  
 130 sent.

131 4. Advise the recipient that the authorization to receive  
 132 documents by electronic posting may be amended or revoked at any  
 133 time and include specific instructions for revoking or amending  
 134 the authorization, including the address designated for the  
 135 purpose of receiving notice of the revocation or amendment.

136 5. Advise the recipient that posting a document on the  
 137 electronic account or website may commence a limitations period  
 138 as short as 6 months even if the recipient never actually  
 139 accesses the electronic account, electronic website, or ~~the~~  
 140 document.

141 (b) Once the recipient signs the written authorization, the  
 142 sender must provide a separate notice to the recipient when a  
 143 document is posted on ~~to~~ the electronic account or website. As  
 144 used in this subsection, the term "separate notice" means a  
 145 notice sent to the recipient by means other than electronic

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146 posting, which identifies each document posted to the electronic  
 147 account or website and provides instructions for accessing the  
 148 ~~posted~~ document. The separate notice requirement is deemed  
 149 satisfied if the recipient accesses the document on the  
 150 electronic account or website.

151 (c) A document sent by electronic posting is deemed  
 152 received by the recipient on the earlier of the date on which  
 153 ~~that~~ the separate notice is received or the date on which ~~that~~  
 154 the recipient accesses the document on the electronic account or  
 155 website.

156 (d) At least annually after a recipient signs a written  
 157 authorization, a sender shall send a notice advising recipients  
 158 who have authorized one or more documents to be posted on ~~to~~ an  
 159 electronic account or website that such posting may commence a  
 160 limitations period as short as 6 months even if the recipient  
 161 never accesses the electronic account or website or the document  
 162 and that authority to receive documents by electronic posting  
 163 may be amended or revoked at any time. This notice must be given  
 164 by means other than electronic posting and may not be  
 165 accompanied by any other written communication. Failure to  
 166 provide such notice within 380 days after the last notice is  
 167 deemed to automatically revoke the authorization to receive  
 168 documents in the manner permitted under this subsection 380 days  
 169 after the last notice is sent.

170 (e) The notice required in paragraph (d) may be in  
 171 substantially the following form: "You have authorized the  
 172 receipt of documents through posting on ~~to~~ an electronic account  
 173 or website on which ~~where~~ the documents can be accessed. This  
 174 notice is being sent to advise you that a limitations period,

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175 which may be as short as 6 months, may be running as to matters  
 176 disclosed in a trust accounting or other written report of a  
 177 trustee posted to the electronic account or website even if you  
 178 never actually access the electronic account or website or the  
 179 documents. You may amend or revoke the authorization to receive  
 180 documents by electronic posting at any time. If you have any  
 181 questions, please consult your attorney."

182 (f) A sender may rely on the recipient's authorization  
 183 until the recipient amends or revokes the authorization by  
 184 sending a notice to the address designated for that purpose in  
 185 the authorization or in the manner specified on the electronic  
 186 account or website. The recipient, at any time, may amend or  
 187 revoke an authorization to have documents posted on the  
 188 electronic account or website.

189 (g) If a document is provided to a recipient solely through  
 190 electronic posting pursuant to this subsection, the recipient  
 191 must be able to access and print or download the document until  
 192 the earlier of remain accessible to the recipient on the  
 193 electronic account or website for at least 4 years after the  
 194 date that the document is deemed received by the recipient or  
 195 the date upon which the recipient's access to the electronic  
 196 account or website is terminated for any reason.

197 1. If the recipient's access to the electronic account or  
 198 website is terminated for any reason, such termination does not  
 199 invalidate the notice or sending of any document previously  
 200 posted on the electronic account or website in accordance with  
 201 this subsection, but may toll the applicable limitations period  
 202 as provided in subparagraph 2.

203 2. If the recipient's access to the electronic account or

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204 website is terminated by the sender sooner than 4 years after  
 205 the date on which the document was received by the recipient,  
 206 any applicable limitations period set forth in s. 736.1008(1) or  
 207 (2) which is still running is tolled for any information  
 208 adequately disclosed in a document sent solely by electronic  
 209 posting, from the date on which the recipient's access to the  
 210 electronic account or website was terminated by the sender until  
 211 45 days after the date on which the sender provides one of the  
 212 following to the recipient by means other than electronic  
 213 posting:

214 a. Notice of such termination and notification to the  
 215 recipient that he or she may request that any documents sent  
 216 during the prior 4 years solely through electronic posting be  
 217 provided to him or her by other means at no cost; or

218 b. Notice of such termination and notification to the  
 219 recipient that his or her access to the electronic account or  
 220 website has been restored.

221  
 222 Any applicable limitations period is further tolled from the  
 223 date on which any request is made pursuant to sub-subparagraph  
 224 2.a. until 20 days after the date on which the requested  
 225 documents are provided to the recipient by means other than  
 226 electronic posting ~~The electronic account or website must allow~~  
 227 ~~the recipient to download or print the document. This subsection~~  
 228 ~~does not affect or alter the duties of a trustee to keep clear,~~  
 229 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~  
 230 ~~or alter the time periods for which the trustee must maintain~~  
 231 ~~those records.~~

232 (h) For purposes of this subsection, access to an

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233 electronic account or website is terminated by the sender when  
 234 the sender unilaterally terminates the recipient's ability to  
 235 access the electronic website or account or to download or print  
 236 any document posted on such website or account. Access is not  
 237 terminated by the sender when access is terminated by an action  
 238 of the recipient or by an action of the sender in response to  
 239 the recipient's request to terminate access. The recipient's  
 240 revocation of authorization pursuant to paragraph (f) is not  
 241 considered a request to terminate access. To be effective, the  
 242 posting of a document to an electronic account or website must  
 243 be done in accordance with this subsection. The sender has the  
 244 burden of establishing compliance with this subsection.

245 (i) This subsection does not affect or alter the duties of  
 246 a trustee to keep clear, distinct, and accurate records pursuant  
 247 to s. 736.0810 or affect or alter the time periods for which the  
 248 trustee must maintain such records preclude the sending of a  
 249 document by other means.

250 (j) This subsection governs the posting of a document  
 251 solely for the purpose of giving notice under this code or the  
 252 sending of a document to a person under this code and does not  
 253 prohibit or otherwise apply to the posting of a document on an  
 254 electronic account or website for any other purpose or preclude  
 255 the sending of a document by any other means.

256 Section 4. Section 736.0404, Florida Statutes, is amended  
 257 to read:

258 736.0404 Trust purposes.—A trust may be created only to the  
 259 extent the purposes of the trust are lawful, not contrary to  
 260 public policy, and possible to achieve. ~~A trust and its terms~~  
 261 ~~must be for the benefit of its beneficiaries.~~

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262 Section 5. Effective upon becoming a law, section  
 263 736.04117, Florida Statutes, is amended to read:

264 736.04117 Trustee's power to invade principal in trust.—

265 (1) DEFINITIONS.—As used in this section, the term:

266 (a) "Absolute power" means ~~Unless the trust instrument~~  
 267 ~~expressly provides otherwise, a trustee who has absolute power~~  
 268 ~~under the terms of a trust to invade the principal of the trust,~~  
 269 ~~referred to in this section as the "first trust," to make~~  
 270 ~~distributions to or for the benefit of one or more persons may~~  
 271 ~~instead exercise the power by appointing all or part of the~~  
 272 ~~principal of the trust subject to the power in favor of a~~  
 273 ~~trustee of another trust, referred to in this section as the~~  
 274 ~~"second trust," for the current benefit of one or more of such~~  
 275 ~~persons under the same trust instrument or under a different~~  
 276 ~~trust instrument; provided:~~

277 1. ~~The beneficiaries of the second trust may include only~~  
 278 ~~beneficiaries of the first trust;~~

279 2. ~~The second trust may not reduce any fixed income,~~  
 280 ~~annuity, or unitrust interest in the assets of the first trust;~~  
 281 ~~and~~

282 3. ~~If any contribution to the first trust qualified for a~~  
 283 ~~marital or charitable deduction for federal income, gift, or~~  
 284 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~  
 285 ~~amended, the second trust shall not contain any provision which,~~  
 286 ~~if included in the first trust, would have prevented the first~~  
 287 ~~trust from qualifying for such a deduction or would have reduced~~  
 288 ~~the amount of such deduction.~~

289 (b) ~~For purposes of this subsection, an absolute power to~~  
 290 ~~invade principal shall include a power to invade principal that~~

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291 is not limited to specific or ascertainable purposes, such as  
 292 health, education, maintenance, and support, regardless of  
 293 ~~whether or not~~ the term "absolute" is used. A power to invade  
 294 principal for purposes such as best interests, welfare, comfort,  
 295 or happiness constitutes ~~shall constitute~~ an absolute power not  
 296 limited to specific or ascertainable purposes.

297 (b) "Authorized trustee" means a trustee, other than the  
 298 settlor or a beneficiary, who has the power to invade the  
 299 principal of a trust.

300 (c) "Beneficiary with a disability" means a beneficiary of  
 301 the first trust who the authorized trustee believes may qualify  
 302 for government benefits based on disability, regardless of  
 303 whether the beneficiary currently receives those benefits or has  
 304 been adjudicated incapacitated.

305 (d) "Current beneficiary" means a beneficiary who, on the  
 306 date his or her qualification is determined, is a distributee or  
 307 permissible distributee of trust income or principal. The term  
 308 includes the holder of a presently exercisable general power of  
 309 appointment but does not include a person who is a beneficiary  
 310 only because he or she holds another power of appointment.

311 (e) "Government benefits" means financial aid or services  
 312 from any state, federal, or other public agency.

313 (f) "Internal Revenue Code" means the Internal Revenue Code  
 314 of 1986, as amended.

315 (g) "Power of appointment" has the same meaning as provided  
 316 in s. 731.201.

317 (h) "Presently exercisable general power of appointment"  
 318 means a power of appointment exercisable by the power holder at  
 319 the relevant time. The term:

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320 1. Includes a power of appointment that is exercisable only  
 321 after the occurrence of a specified event or that is subject to  
 322 a specified restriction, but only after the event has occurred  
 323 or the restriction has been satisfied.

324 2. Does not include a power of appointment that is  
 325 exercisable only upon the death of the power holder.

326 (i) "Substantially similar" means that there is no material  
 327 change in a beneficiary's beneficial interests or in the power  
 328 to make distributions and that the power to make a distribution  
 329 under a second trust for the benefit of a beneficiary who is an  
 330 individual is substantially similar to the power under the first  
 331 trust to make a distribution directly to the beneficiary. A  
 332 distribution is deemed to be for the benefit of a beneficiary  
 333 if:

334 1. The distribution is applied for the benefit of a  
 335 beneficiary;

336 2. The beneficiary is under a legal disability or the  
 337 trustee reasonably believes the beneficiary is incapacitated,  
 338 and the distribution is made as permitted under this code; or

339 3. The distribution is made as permitted under the terms of  
 340 the first trust instrument and the second trust instrument for  
 341 the benefit of the beneficiary.

342 (j) "Supplemental needs trust" means a trust that the  
 343 authorized trustee believes would not be considered a resource  
 344 for purposes of determining whether the beneficiary who has a  
 345 disability is eligible for government benefits.

346 (k) "Vested interest" means a current unconditional right  
 347 to receive a mandatory distribution of income, a specified  
 348 dollar amount, or a percentage of value of a trust, or a current

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349 unconditional right to withdraw income, a specified dollar  
 350 amount, or a percentage of value of a trust, which right is not  
 351 subject to the occurrence of a specified event, the passage of a  
 352 specified time, or the exercise of discretion.

353 1. The term includes a presently exercisable general power  
 354 of appointment.

355 2. The term does not include a beneficiary's interest in a  
 356 trust if the trustee has discretion to make a distribution of  
 357 trust property to a person other than such beneficiary.

358 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN  
 359 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.-

360 (a) Unless a trust instrument expressly provides otherwise,  
 361 an authorized trustee who has absolute power under the terms of  
 362 the trust to invade its principal, referred to in this section  
 363 as the "first trust," to make current distributions to or for  
 364 the benefit of one or more beneficiaries may instead exercise  
 365 such power by appointing all or part of the principal of the  
 366 trust subject to such power in favor of a trustee of one or more  
 367 other trusts, whether created under the same trust instrument as  
 368 the first trust or a different trust instrument, including a  
 369 trust instrument created for the purposes of exercising the  
 370 power granted by this section, each referred to in this section  
 371 as the "second trust," for the current benefit of one or more of  
 372 such beneficiaries only if:

373 1. The beneficiaries of the second trust include only  
 374 beneficiaries of the first trust; and

375 2. The second trust does not reduce any vested interest.

376 (b) In an exercise of absolute power, the second trust may:

377 1. Retain a power of appointment granted in the first

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378 trust;

379 2. Omit a power of appointment granted in the first trust,  
 380 other than a presently exercisable general power of appointment;

381 3. Create or modify a power of appointment if the power  
 382 holder is a current beneficiary of the first trust;

383 4. Create or modify a power of appointment if the power  
 384 holder is a beneficiary of the first trust who is not a current  
 385 beneficiary, but the exercise of the power of appointment may  
 386 take effect only after the power holder becomes, or would have  
 387 become if then living, a current beneficiary of the first trust;  
 388 and

389 5. Extend the term of the second trust beyond the term of  
 390 the first trust.

391 (c) The class of permissible appointees in favor of which a  
 392 created or modified power of appointment may be exercised may  
 393 differ from the class identified in the first trust.

394 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN  
 395 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.-  
 396 Unless the trust instrument expressly provides otherwise, an  
 397 authorized trustee who has a power, other than an absolute  
 398 power, under the terms of a first trust to invade principal to  
 399 make current distributions to or for the benefit of one or more  
 400 beneficiaries may instead exercise such power by appointing all  
 401 or part of the principal of the first trust subject to such  
 402 power in favor of a trustee of one or more second trusts. If the  
 403 authorized trustee exercises such power:

404 (a) The second trusts, in the aggregate, shall grant each  
 405 beneficiary of the first trust beneficial interests in the  
 406 second trusts which are substantially similar to the beneficial

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407 interests of the beneficiary in the first trust.

408 (b) If the first trust grants a power of appointment to a  
 409 beneficiary of the first trust, the second trust shall grant  
 410 such power of appointment in the second trust to such  
 411 beneficiary, and the class of permissible appointees shall be  
 412 the same as in the first trust.

413 (c) If the first trust does not grant a power of  
 414 appointment to a beneficiary of the first trust, the second  
 415 trust may not grant a power of appointment in the second trust  
 416 to such beneficiary.

417 (d) Notwithstanding paragraphs (a), (b), and (c), the term  
 418 of the second trust may extend beyond the term of the first  
 419 trust, and, for any period after the first trust would have  
 420 otherwise terminated, in whole or in part, under the provisions  
 421 of the first trust, the trust instrument of the second trust  
 422 may, with respect to property subject to such extended term:

423 1. Include language providing the trustee with the absolute  
 424 power to invade the principal of the second trust during such  
 425 extended term; and

426 2. Create a power of appointment, if the power holder is a  
 427 current beneficiary of the first trust, or expand the class of  
 428 permissible appointees in favor of which a power of appointment  
 429 may be exercised.

430 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS  
 431 TRUST.-

432 (a) Notwithstanding subsections (2) and (3), unless the  
 433 trust instrument expressly provides otherwise, an authorized  
 434 trustee who has the power under the terms of a first trust to  
 435 invade the principal of the first trust to make current

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436 distributions to or for the benefit of a beneficiary with a  
 437 disability may instead exercise such power by appointing all or  
 438 part of the principal of the first trust in favor of a trustee  
 439 of a second trust that is a supplemental needs trust if:

440 1. The supplemental needs trust benefits the beneficiary  
 441 with a disability;

442 2. The beneficiaries of the second trust include only  
 443 beneficiaries of the first trust; and

444 3. The authorized trustee determines that the exercise of  
 445 such power will further the purposes of the first trust.

446 (b) Except as affected by any change to the interests of  
 447 the beneficiary with a disability, the second trusts, in the  
 448 aggregate, shall grant each other beneficiary of the first trust  
 449 beneficial interests in the second trusts which are  
 450 substantially similar to such other beneficiary's beneficial  
 451 interests in the first trust.

452 (5) PROHIBITED DISTRIBUTIONS.-

453 (a) An authorized trustee may not distribute the principal  
 454 of a trust under this section in a manner that would prevent a  
 455 contribution to that trust from qualifying for, or that would  
 456 reduce a federal tax benefit, including a federal tax exclusion  
 457 or deduction, which was originally claimed or could have been  
 458 claimed for that contribution, including:

459 1. An exclusion under s. 2503(b) or s. 2503(c) of the  
 460 Internal Revenue Code;

461 2. A marital deduction under s. 2056, s. 2056A, or s. 2523  
 462 of the Internal Revenue Code;

463 3. A charitable deduction under s. 170(a), s. 642(c), s.  
 464 2055(a), or s. 2522(a) of the Internal Revenue Code;

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465 4. Direct skip treatment under s. 2642(c) of the Internal  
 466 Revenue Code; or  
 467 5. Any other tax benefit for income, gift, estate, or  
 468 generation-skipping transfer tax purposes under the Internal  
 469 Revenue Code.  
 470 (b) If S corporation stock is held in the first trust, an  
 471 authorized trustee may not distribute all or part of that stock  
 472 to a second trust that is not a permitted shareholder under s.  
 473 1361(c)(2) of the Internal Revenue Code. If the first trust  
 474 holds stock in an S corporation and is, or but for provisions of  
 475 paragraphs (a), (c), and (d) would be, a qualified subchapter S  
 476 trust within the meaning of s. 1361(d) of the Internal Revenue  
 477 Code, the second trust instrument may not include or omit a term  
 478 that prevents it from qualifying as a qualified subchapter S  
 479 trust.  
 480 (c) Except as provided in paragraphs (a), (b), and (d), an  
 481 authorized trustee may distribute the principal of a first trust  
 482 to a second trust regardless of whether the settlor is treated  
 483 as the owner of either trust under ss. 671-679 of the Internal  
 484 Revenue Code; however, if the settlor is not treated as the  
 485 owner of the first trust, he or she may not be treated as the  
 486 owner of the second trust unless he or she at all times has the  
 487 power to cause the second trust to cease being treated as if it  
 488 were owned by the settlor.  
 489 (d) If an interest in property which is subject to the  
 490 minimum distribution rules of s. 401(a)(9) of the Internal  
 491 Revenue Code is held in trust, an authorized trustee may not  
 492 distribute such an interest to a second trust under subsection  
 493 (2), subsection (3), or subsection (4) if the distribution would

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494 shorten the otherwise applicable maximum distribution period.  
 495 (6) EXERCISE BY WRITING.—The exercise of a power to invade  
 496 principal under subsection (2), subsection (3), or subsection  
 497 (4) must ~~The exercise of a power to invade principal under~~  
 498 ~~subsection (1) shall~~ be by a written ~~an~~ instrument ~~in writing,~~  
 499 signed and acknowledged by the authorized trustee, and filed  
 500 with the records of the first trust.  
 501 (7)(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a  
 502 power to invade principal under subsection (2), subsection (3),  
 503 or subsection (4):  
 504 (a)(1) ~~Is~~ shall be considered the exercise of a power of  
 505 appointment, ~~excluding other than~~ a power to appoint to the  
 506 authorized trustee, the authorized trustee's creditors, the  
 507 authorized trustee's estate, or the creditors of the authorized  
 508 trustee's estate.  
 509 (b) ~~Is, and shall be~~ subject to the provisions of s.  
 510 689.225 covering the time at which the permissible period of the  
 511 rule against perpetuities begins and the law that determines the  
 512 permissible period of the rule against perpetuities of the first  
 513 trust.  
 514 (c) May apply to a second trust created or administered  
 515 under the law of any jurisdiction.  
 516 (d) May not:  
 517 1. Increase the authorized trustee's compensation beyond  
 518 the compensation specified in the first trust instrument; or  
 519 2. Relieve the authorized trustee from liability for breach  
 520 of trust or provide for indemnification of the authorized  
 521 trustee for any liability or claim to a greater extent than the  
 522 first trust instrument; however, the exercise of the power may

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523 divide and reallocate fiduciary powers among fiduciaries and  
 524 relieve a fiduciary from liability for an act or failure to act  
 525 of another fiduciary as otherwise allowed under law or common  
 526 law.

527 (8) NOTICE.-

528 (a)(4) The authorized trustee shall provide written  
 529 notification of the manner in which he or she intends to  
 530 exercise his or her power to invade principal to notify all  
 531 qualified beneficiaries of the following parties first trust, in  
 532 writing, at least 60 days before prior to the effective date of  
 533 the authorized trustee's exercise of such power the trustee's  
 534 power to invade principal pursuant to subsection (2), subsection  
 535 (3), or subsection (4): (1), of the manner in which the trustee  
 536 intends to exercise the power.

537 1. All qualified beneficiaries of the first trust.

538 2. If paragraph (5)(c) applies, the settlor of the first  
 539 trust.

540 3. All trustees of the first trust.

541 4. Any person who has the power to remove or replace the  
 542 authorized trustee of the first trust.

543 (b) The authorized A copy of the proposed instrument  
 544 exercising the power shall satisfy the trustee's notice  
 545 obligation to provide notice under this subsection is satisfied  
 546 when he or she provides copies of the proposed instrument  
 547 exercising the power, the trust instrument of the first trust,  
 548 and the proposed trust instrument of the second trust.

549 (c) If all of those required to be notified qualified  
 550 beneficiaries waive the notice period by signed written  
 551 instrument delivered to the authorized trustee, the authorized

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552 trustee's power to invade principal shall be exercisable  
 553 immediately.

554 (d) The authorized trustee's notice under this subsection  
 555 does ~~shall~~ not limit the right of any beneficiary to object to  
 556 the exercise of the authorized trustee's power to invade  
 557 principal except as otherwise provided in other applicable  
 558 provisions of this code.

559 (9)(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER  
 560 PROHIBITION.-The exercise of the power to invade principal under  
 561 subsection (2), subsection (3), or subsection (4) (1) is not  
 562 prohibited by a spendthrift clause or by a provision in the  
 563 trust instrument that prohibits amendment or revocation of the  
 564 trust.

565 (10)(6) NO DUTY TO EXERCISE.-Nothing in this section is  
 566 intended to create or imply a duty to exercise a power to invade  
 567 principal, and no inference of impropriety may ~~shall~~ be made as  
 568 a result of an authorized trustee's failure to exercise a  
 569 trustee not exercising the power to invade principal conferred  
 570 under subsections (2), (3), and (4) subsection (1).

571 (11)(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS.-The provisions  
 572 of This section may ~~shall~~ not be construed to abridge the right  
 573 of any trustee who has a power of invasion to appoint property  
 574 in further trust that arises under the terms of the first trust  
 575 or under any other section of this code or under another  
 576 provision of law or under common law.

577 Section 6. Subsection (3) of section 736.08135, Florida  
 578 Statutes, is amended to read:

579 736.08135 Trust accountings.-

580 (3) Subsections (1) and (2) govern the form and content of

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581 ~~This section applies to~~ all trust accountings rendered for any  
 582 accounting periods beginning on or after January 1, 2003, and  
 583 all trust accountings rendered on or after July 1, 2018. This  
 584 subsection does not affect the beginning period from which a  
 585 trustee is required to render a trust accounting.

586 Section 7. Subsection (3) of section 736.1008, Florida  
 587 Statutes, is amended to read:

588 736.1008 Limitations on proceedings against trustees.—

589 (3) When a trustee has not issued a final trust accounting  
 590 or has not given written notice to the beneficiary of the  
 591 availability of the trust records for examination and that  
 592 claims with respect to matters not adequately disclosed may be  
 593 barred, a claim against the trustee for breach of trust based on  
 594 a matter not adequately disclosed in a trust disclosure document  
 595 is barred as provided in chapter 95 and accrues when the  
 596 beneficiary has actual knowledge of:

597 (a) The facts upon which the claim is based, if such actual  
 598 knowledge is established by clear and convincing evidence; or

599 (b) The trustee's repudiation of the trust or adverse  
 600 possession of trust assets.

601

602 Paragraph (a) applies to claims based upon acts or omissions  
 603 occurring on or after July 1, 2008. A beneficiary's actual  
 604 knowledge that he or she has not received a trust accounting  
 605 does not cause a claim to accrue against the trustee for breach  
 606 of trust based upon the failure to provide a trust accounting  
 607 required by s. 736.0813 or former s. 737.303 and does not  
 608 commence the running of any period of limitations or laches for  
 609 such a claim, and paragraph (a) and chapter 95 do not bar any

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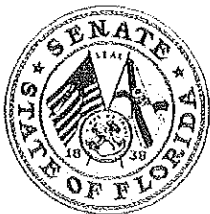
610 such claim.

611 Section 8. The changes to ss. 736.08135 and 736.1008,  
 612 Florida Statutes, made by this act are intended to clarify  
 613 existing law, are remedial in nature, and apply retroactively to  
 614 all cases pending or commenced on or after July 1, 2018.

615 Section 9. Except as otherwise provided in this act and  
 616 except for this section, which shall take effect upon becoming a  
 617 law, this act shall take effect July 1, 2018.

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Education, *Chair*  
Appropriations Subcommittee on the  
Environment and Natural Resources, *Vice Chair*  
Regulated Industries, *Vice Chair*  
Agriculture  
Environmental Preservation and Conservation  
Health Policy  
Transportation

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR DOROTHY L. HUKILL**  
14th District

January 30, 2018

The Honorable Lizbeth Benacquisto  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Re: Senate Bill 478; Trusts

Dear Chairman Benacquisto:

Senate Bill 478, relating to Trusts, has been referred to the Senate Committee on Rules. I respectfully request that SB 478 be placed on the committee agenda at your earliest possible convenience.

Should you need any additional information, please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill  
State Senator, District 14

Cc: John B. Phelps, Staff Director, Senate Committee on Rules  
Cynthia Futch, Committee Administrative Assistant, Senate Committee on Rules

**REPLY TO:**

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- 434 Delannoy Avenue, Suite 204, Cocoa, Florida 32922 (321) 634-3549
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

478

Bill Number (if applicable)

Topic TRUSTS

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title

Address 215 So. Monroe St #815

Phone 850-999-4100

Street

Tallahassee

FL

32301

Email medenfield@dreamroad.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing The Real Property, Probate + Trust Law Section of the Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

SB 478

Bill Number (if applicable)

Topic TRUSTS

Amendment Barcode (if applicable)

Name KENNETH PRATT

Job Title SENIOR VP OF GOV. RELATIONS

Address 1001 THOMASVILLE RD, STE 201

Phone 850-509-8020

Street

TALLAHASSEE

FL

32301

Email kpratt@floridabankers.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA BANKERS ASSOCIATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 514

INTRODUCER: Health Policy Committee and Senator Young

SUBJECT: Transplant of Human Tissue

DATE: February 6, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Fav/CS</b>
2.	Stallard	Cibula	JU	<b>Favorable</b>
3.	Rossitto-Van Winkle	Phelps	RC	<b>Favorable</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 514 requires the Department of Health to develop a pamphlet that contains the following information on the risks and benefits of human cell and tissue transplants:

- An overview of the risks of transmission of infectious diseases associated with a transplant;
- A summary of the standards of testing and screening of donors;
- A summary of processing methods used to reduce the risk of the transmission of bacteria and disease;
- A statement acknowledging the importance of limiting information provided to the supplier about the recipient; and
- A statement acknowledging the generosity of donors.

The Department must publish the pamphlet on its website and electronically notify physicians when it is available.

**II. Present Situation:**

**Tissue Donation and Transplantation**

Organ and tissue donation and transplantation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient).

Transplantation may be necessary because the recipient's organ or tissue has failed or has been damaged by disease or injury. Transplantable organs include the kidneys, liver, heart, lungs, pancreas and intestine.<sup>1</sup> And transplantable tissue includes:

- Skin, which can be used as a temporary dressing for burns, serious abrasions and other exposed areas;
- Heart, valves used to replace defective valves;
- Tendons, used to repair torn ligaments on knees or other joints;
- Veins, used in cardiac by-pass surgery;
- Corneas, used to restore sight; and
- Bone, used in orthopedic surgery to facilitate healing of fractures or to prevent amputation.<sup>2</sup>

The Organ Procurement and Transplantation Network (OPTN) regulates how donor organs are matched and allocated to patients on the waiting list.<sup>3</sup> Non-profit, federally designated organ procurement organizations (OPOs) work closely with the OPTN, hospitals, and transplant centers to facilitate the organ donation and transplantation process,<sup>4</sup> including conducting a thorough medical and social history of the potential donor to help determine the suitability of his or her organs for transplantation.<sup>5</sup>

The Department of Health (DOH) is responsible for the state's public health system to promote, protect, and improve the health of all people in the state. This includes regulating human tissue donation and transplantation.<sup>6</sup> Absent limited exceptions, every donation of human tissue, cells, skin, organs, blood, or plasma for transfusion or transplantation to another person must be tested for HIV infection<sup>7</sup> and any other communicable diseases specified by rule of the DOH or undergo a DOH approved process capable of killing the causative agent of those diseases.<sup>8,9</sup> The DOH, by rule,<sup>10</sup> requires that blood, organs, and tissue be tested for the following additional infectious disease agents, as identified by the federal regulation:

- Hepatitis B virus;
- Hepatitis C virus;
- Human T-lymphotropic virus, type I; and
- Human T-lymphotropic virus, type II.<sup>11</sup>

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<sup>1</sup> Donate Life Florida, *Frequently Asked Questions*, <https://www.donateliflorida.org/categories/donation/> (last visited Jan. 27, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *The Organ Transplant Process*, <https://organdonor.gov/about/process/transplant-process.html> (last visited Jan. 27, 2018).

<sup>4</sup> Donate Life Florida, *Organ Procurement Organizations and Transplant Centers*, <https://www.donateliflorida.org/local-resources/transplant-centers/> (last visited Jan. 17, 2018).

<sup>5</sup> Organ Procurement and Transplantation Network, U.S. Department of Health and Human Services, *The Basic Path of Donation*, <https://optn.transplant.hrsa.gov/learn/about-donation/the-basic-path-of-donation/> (last visited Jan. 27, 2018).

<sup>6</sup> Section 381.001, F.S.

<sup>7</sup> Testing for HIV infection is required for both type 1 and type 2 HIV. *See* 21 C.F.R. §§ 610.40 and 1270.21 (2017).

<sup>8</sup> Section 381.0041(3), F.S.

<sup>9</sup> Section 381.0041(1), (3), F.S.

<sup>10</sup> Rule 64D-2.005, F.A.C.

<sup>11</sup> *See* 21 C.F.R. §§ 610.40 and 1270.21 (2017).

### **The Zika Virus and Transplant Tissue Testing**

In March 2016, the U.S. Department of Health and Human Services, Food and Drug Administration (FDA), Center for Biologics Evaluation and Research issued non-binding recommendations on donor screening to reduce the risk of the Zika virus's transmission to human cells, tissues, and cellular products. The recommendations included the review of a potential donor's medical records for any clinical evidence of the Zika virus. Under the recommendations, a donor was considered ineligible if he or she:

- Had a medical diagnose of a Zika virus infection in the past six months;
- Was a resident of, or traveled to, an area with active Zika virus transmission within the past six months; or
- Had sex with a male diagnosed with a Zika virus infection in the past six months who had resided in, or traveled to, an area with active Zika virus transmission within the past six months.<sup>12</sup>

### **III. Effect of Proposed Changes:**

The bill requires the Department of Health to develop a pamphlet that contains the following information on the risks and benefits of human cell and tissue transplants:

- An overview of the risks of transmission of infectious diseases associated with a transplant;
- A summary of the standards of testing and screening of donors;
- A summary of processing methods used to reduce the risk of the transmission of bacteria and disease;
- A statement acknowledging the importance of limiting information provided to the supplier about the recipient; and
- A statement acknowledging the generosity of donors.

The Department must publish the pamphlet on its website and electronically notify physicians when it is available.

The effective date of the bill is July 1, 2018.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>12</sup> The FDA has authority to issue guidance to industry in accordance with 21 CFR 10.115(g)(2). See U.S. Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research, *Donor Screening Recommendations to Reduce the Risk of Transmission of Zika Virus by Human Cells, Tissues, and Cellular and Tissue-Based Products - Guidance for Industry*, <https://www.fda.gov/downloads/biologicsbloodvaccines/guidancecomplianceregulatoryinformation/guidances/tissue/ucm488582.pdf> (last visited Jan. 27, 2018).

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health will incur an unknown cost in developing the educational pamphlet, in publishing it on the website, and in notifying physicians of the pamphlet's availability.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 381.0041 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/SB 514 by Health Policy on January 23, 2018:**

The CS removed the requirement for health care providers to warn potential transplant recipients of the risks of contracting ZIKV. Instead, the DOH must develop a pamphlet addressing the risks and benefits of human cells and tissue transplants; publish the pamphlet on its website; and electronically notify physicians when the pamphlet is available.

B. Amendments:

None.



By the Committee on Health Policy; and Senator Young

588-02379-18

2018514c1

1 A bill to be entitled  
 2 An act relating to transplant of human tissue;  
 3 amending s. 381.0041, F.S.; requiring the Department  
 4 of Health to develop and publish an educational  
 5 pamphlet which contains certain information on the  
 6 risks and benefits of transplants; requiring the  
 7 department to notify physicians of the availability of  
 8 the pamphlet; providing an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Subsection (13) is added to section 381.0041,  
 13 Florida Statutes, to read:  
 14 381.0041 Donation and transfer of human tissue; testing  
 15 requirements.-  
 16 (13) The department shall develop an educational pamphlet  
 17 that contains information on the risks and benefits of human  
 18 cell, tissue, and cellular- and tissue-based product  
 19 transplants. The department shall publish the pamphlet on its  
 20 website and shall electronically notify physicians when the  
 21 pamphlet becomes available. At a minimum, the pamphlet must  
 22 include all of the following:  
 23 (a) An overview of the infectious disease transmission  
 24 risks associated with a transplant.  
 25 (b) A summary of the standards for the testing and  
 26 screening of donors.  
 27 (c) A summary of processing methods that are used to reduce  
 28 the risk of transmission of bacteria and infectious diseases in  
 29 donated human cells, tissues, and cellular- and tissue-based

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

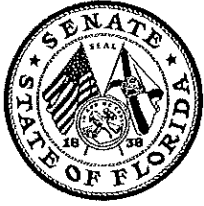
588-02379-18

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30 products before transplantation.  
 31 (d) A statement acknowledging the importance of limiting  
 32 information provided to the supplier of the human cells, tissue,  
 33 or cellular- or tissue-based product on the recipient of the  
 34 transplant.  
 35 (e) A statement acknowledging the generosity of donors of  
 36 human cells, tissues, and cellular- and tissue-based products.  
 37 Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Health Policy, *Chair*  
Appropriations Subcommittee on Pre-K - 12  
Education, *Vice Chair*  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Regulated Industries

## JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

**SENATOR DANA YOUNG**  
18th District

January 30, 2018

Senator Lizbeth Benacquisto, Chair  
Senate Rules Committee  
402 Senate Office Building  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 514 relating to Transplant of Human Tissue has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,

A handwritten signature in cursive script that reads "Dana Young".

Dana Young  
State Senator – 18<sup>th</sup> District

cc: John Phelps, Staff Director – Senate Rules Committee

## REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 906

INTRODUCER: Health Policy Committee and Senator Young

SUBJECT: Public Records/Health Care Facilities

DATE: February 6, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	<b>Favorable</b>
3.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 906 provides a public records exemption for certain building plans, blueprints, and other construction documents received by an agency. Current law makes exempt from public records disclosure building plans, blueprints, schematic drawings, and diagrams of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, and a hotel or motel development. The bill applies the existing public records exemption to building plans and other construction documents provided by a health care facility to, in this case, the Agency for Health Care Administration (AHCA).

A health care facility is defined as a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled.

In the required statement of public necessity, the bill provides as justification for the exemption that the exemption is needed to ensure the safety of staff, patients, and visitors, due to recent security threats against health care facilities. Building plans include diagrams and details depicting the internal layout and structural elements of the facility, release of which could be misappropriated by terrorists and other criminals in planning an attack on a facility.

The bill includes a provision for an Open Government Sunset Review and provides an automatic repeal date of October 2, 2023, unless reviewed and saved from repeal before that time by the Legislature.

A two-thirds vote of each chamber is required for passage because the bill creates a public records exemption.

The bill takes effect upon becoming law.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.<sup>9</sup> The exemption must

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>12</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>14</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>15</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>16</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>17</sup>

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<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>12</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>13</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>14</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>20</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>21</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>22</sup>

### **General Public Records Exemption from Inspection or Copying of Public Records**

Current law provides a general public records exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of designated facilities and which are held by an agency.

Facilities to which the exemption applies are:

- An attraction and recreation facility;
- An entertainment or resort complex;
- An industrial complex;
- A retail and service development;
- An office development; and
- A hotel or motel development.<sup>23</sup>

### **Agency for Health Care Administration (AHCA) Review of Health Care Facility Building Plans**

The Office of Plans and Construction (Office) within the AHCA is primarily responsible for ensuring that hospitals, nursing homes, ambulatory surgical centers, and Intermediate Care

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<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>21</sup> FLA. CONST. art. I, s. 24(c).

<sup>22</sup> Section 119.15(7), F.S.

<sup>23</sup> Section 119.071(3)(c)1., F.S.

Facilities for the Developmentally Disabled are safe, functional, and provide safety-to-life for the patients and residents. The Office reviews and approves facilities' plans and specifications and surveys their construction. These licensed health care facilities must notify the Office in writing before any equipment replacements, renovations, additions, or new facilities are created. Plans and specifications for these activities must be approved before any construction begins. Architects, engineers, and other plans and construction personnel survey facilities under construction and, when necessary, write reports for required corrections to the construction before approval of the project is given.<sup>24</sup>

Schematics, preliminary plans and construction documents received by the AHCA and other government agencies for hospitals, ambulatory surgical centers, nursing homes and intermediate care facilities for the developmentally disabled are subject to release as public records. These plans include building floor plans, communication systems, medical gas systems, electrical systems, and other physical plant and security details. Recent security threats have been shared by state and federal security and emergency preparedness officials that describe the targeting of health care facilities by terrorists. Because architectural and engineering plans reviewed and held by government agencies include information regarding emergency egress, locking arrangements, critical life safety systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities.<sup>25</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 119.071, F.S., to exempt building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of a health care facility. The bill defines "health care facility" as a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled. This exemption currently exists for an attraction and recreation facility, entertainment or resort complex, industrial complex, retail and services development, office development, and hotel and motel development.

As the bill makes the information exempt, rather than confidential and exempt from disclosure, the AHCA may have some discretion in releasing the information.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and establishes an automatic repeal date of October 2, 2023, unless saved from repeal before that time by the Legislature.

**Section 2** of the bill provides the required public necessity statement. The bill provides that, because the plans and blueprints of health care facilities are held by the AHCA, they are subject to public records laws and may be obtained by criminals and terrorists who plan to exploit vulnerabilities in the health care facilities' physical plants. These documents should be made exempt from disclosure to ensure the safety of the health care facility's staff, patients, and visitors. The bill states that it is a public necessity to exempt these records from public records

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<sup>24</sup> AHCA, Office of Plans and Construction, available at: <http://ahca.myflorida.com/MCHQ/Plans/> (last visited Jan. 25, 2018).

<sup>25</sup> AHCA, *HB 551 Legislative Bill Analysis* (Nov. 28, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability and the Senate Committee on Health Policy).

laws in order to prevent possible terrorist or criminal actions and to reduce these facilities' exposure to security threats.

**Section 3** provides that the bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

##### **B. Public Records/Open Meetings Issues:**

###### **Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

###### **Public Necessity Statement**

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the safety of the health care facility's staff, patients, and visitors, to prevent possible terrorist or criminal actions, and to reduce these facilities' exposure to security threats against health care facilities.

###### **Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts only building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of a health care facility. This exemption already applies to other specified structures and facilities. Therefore, the bill appears to be no broader than necessary to accomplish the public necessity of the exemption.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.



B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Policy on January 16, 2018:**

The CS rewords the public necessity statement to make grammatical changes and to eliminate a reference to information on emergency generators being made exempt from public records laws.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Young

588-02149-18

2018906c1

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.071, F.S.; providing an exemption from public  
 4 records requirements for building plans, blueprints,  
 5 schematic drawings, and diagrams held by an agency  
 6 which depict the internal layout or structural  
 7 elements of certain health care facilities; providing  
 8 for future legislative review and repeal of the  
 9 exemption; providing a statement of public necessity;  
 10 providing an effective date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Paragraph (c) of subsection (3) of section  
 15 119.071, Florida Statutes, is amended to read:  
 16 119.071 General exemptions from inspection or copying of  
 17 public records.—  
 18 (3) SECURITY.—  
 19 (c)1. Building plans, blueprints, schematic drawings, and  
 20 diagrams, including draft, preliminary, and final formats, which  
 21 depict the internal layout or structural elements of an  
 22 attractions and recreation facility, entertainment or resort  
 23 complex, industrial complex, retail and service development,  
 24 office development, health care facility, or hotel or motel  
 25 development, which records are held by an agency are exempt from  
 26 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  
 27 2. This exemption applies to any such records held by an  
 28 agency before, on, or after the effective date of this act.  
 29 3. Information made exempt by this paragraph may be

Page 1 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

588-02149-18

2018906c1

30 disclosed to another governmental entity if disclosure is  
 31 necessary for the receiving entity to perform its duties and  
 32 responsibilities; to the owner or owners of the structure in  
 33 question or the owner's legal representative; or upon a showing  
 34 of good cause before a court of competent jurisdiction.  
 35 4. This paragraph does not apply to comprehensive plans or  
 36 site plans, or amendments thereto, which are submitted for  
 37 approval or which have been approved under local land  
 38 development regulations, local zoning regulations, or  
 39 development-of-regional-impact review.  
 40 5. As used in this paragraph, the term:  
 41 a. "Attractions and recreation facility" means any sports,  
 42 entertainment, amusement, or recreation facility, including, but  
 43 not limited to, a sports arena, stadium, racetrack, tourist  
 44 attraction, amusement park, or pari-mutuel facility that:  
 45 (I) For single-performance facilities:  
 46 (A) Provides single-performance facilities; or  
 47 (B) Provides more than 10,000 permanent seats for  
 48 spectators.  
 49 (II) For serial-performance facilities:  
 50 (A) Provides parking spaces for more than 1,000 motor  
 51 vehicles; or  
 52 (B) Provides more than 4,000 permanent seats for  
 53 spectators.  
 54 b. "Entertainment or resort complex" means a theme park  
 55 comprised of at least 25 acres of land with permanent  
 56 exhibitions and a variety of recreational activities, which has  
 57 at least 1 million visitors annually who pay admission fees  
 58 thereto, together with any lodging, dining, and recreational

Page 2 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 facilities located adjacent to, contiguous to, or in close  
60 proximity to the theme park, as long as the owners or operators  
61 of the theme park, or a parent or related company or subsidiary  
62 thereof, has an equity interest in the lodging, dining, or  
63 recreational facilities or is in privity therewith. Close  
64 proximity includes an area within a 5-mile radius of the theme  
65 park complex.

66 c. "Industrial complex" means any industrial,  
67 manufacturing, processing, distribution, warehousing, or  
68 wholesale facility or plant, as well as accessory uses and  
69 structures, under common ownership that:

70 (I) Provides onsite parking for more than 250 motor  
71 vehicles;

72 (II) Encompasses 500,000 square feet or more of gross floor  
73 area; or

74 (III) Occupies a site of 100 acres or more, but excluding  
75 wholesale facilities or plants that primarily serve or deal  
76 onsite with the general public.

77 d. "Retail and service development" means any retail,  
78 service, or wholesale business establishment or group of  
79 establishments which deals primarily with the general public  
80 onsite and is operated under one common property ownership,  
81 development plan, or management that:

82 (I) Encompasses more than 400,000 square feet of gross  
83 floor area; or

84 (II) Provides parking spaces for more than 2,500 motor  
85 vehicles.

86 e. "Office development" means any office building or park  
87 operated under common ownership, development plan, or management

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88 that encompasses 300,000 or more square feet of gross floor  
89 area.

90 f. "Health care facility" means a hospital, ambulatory  
91 surgical center, nursing home, hospice, or intermediate care  
92 facility for the developmentally disabled.

93 ~~g.f.~~ "Hotel or motel development" means any hotel or motel  
94 development that accommodates 350 or more units.

95 6. This paragraph is subject to the Open Government Sunset  
96 Review Act in accordance with s. 119.15 and shall stand repealed  
97 on October 2, 2023, unless reviewed and saved from repeal  
98 through reenactment by the Legislature.

99 Section 2. The Legislature finds that it is a public  
100 necessity that the building plans, blueprints, schematic  
101 drawings, and diagrams of a health care facility should be made  
102 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
103 Article I of the State Constitution to ensure the safety of the  
104 health care facility's staff, patients, and visitors. Building  
105 plans, blueprints, schematic drawings, diagrams, preliminary  
106 plans, and construction documents the Agency for Health Care  
107 Administration and other governmental agencies receive which  
108 depict the internal layout or structural elements of hospitals,  
109 ambulatory surgical centers, nursing homes, hospices, and  
110 intermediate care facilities for the developmentally disabled  
111 are currently public records and are subject to release upon  
112 request. The Agency for Health Care Administration reviews the  
113 building plans for proposed health care facility construction to  
114 ensure compliance with building codes and agency rules and  
115 standards in order to protect the public health and safety.  
116 These building plans include diagrams and schematics of building

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117 floor plans, communication systems, medical gas systems,  
118 electrical systems, and other physical plant and security  
119 details depicting the internal layout and structural elements of  
120 the health care facilities. Recent security threats have been  
121 shared by state and federal security and emergency preparedness  
122 officials which describe the targeting of health care facilities  
123 by terrorists. Because architectural and engineering plans  
124 reviewed and held by governmental agencies include information  
125 regarding emergency egress, locking arrangements, critical life  
126 safety systems, and restricted areas, these plans could be used  
127 by criminals or terrorists to examine the physical plant for  
128 vulnerabilities. Information contained in these documents could  
129 aid in the planning of, training for, and execution of criminal  
130 actions including infant abduction, cybercrime, arson, and  
131 terrorism. Consequently, the Legislature finds that the public  
132 records exemption created by this act is a public necessity to  
133 reduce exposure to security threats and protect the public.

134 Section 3. This act shall take effect upon becoming a law.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Health Policy, *Chair*  
Appropriations Subcommittee on Pre-K - 12  
Education, *Vice Chair*  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Regulated Industries

## JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

## SENATOR DANA YOUNG

18th District

January 30, 2018

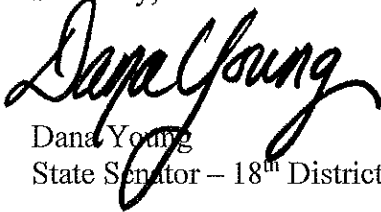
Senator Elizabeth Benacquisto, Chair  
Senate Rules Committee  
402 Senate Office Building  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 906 relating to Public Records/Health Care Facilities has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young  
State Senator – 18<sup>th</sup> District

cc: John Phelps, Staff Director – Senate Rules Committee

## REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

SB 906

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Orlando Pryor

Job Title Legislative Affairs Director

Address 2727 Mahan Drive  
Street

Phone 850-412-3612

Tallahassee FL 32308  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Agency for Health Care Administration

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Rules

---

**BILL:** CS/SB 562

**INTRODUCER:** Community Affairs Committee and Senator Mayfield

**SUBJECT:** Regulation of Smoking

**DATE:** February 6, 2018      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	<b>Fav/CS</b>
2.	Looke	Stovall	HP	<b>Favorable</b>
3.	Cochran	Phelps	RC	<b>Favorable</b>

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 562 allows a municipality or county to restrict smoking within the boundaries of any public parks owned by the municipality or county and allows a county to restrict smoking within any designated facility<sup>1</sup> owned by the county.

**II. Present Situation:**

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.<sup>2</sup>

---

<sup>1</sup> The term “designated facilities” is defined in s. 154.08, F.S., and includes any county-owned or county-operated facility used in connection with the delivery of health care, the operation, governance, or maintenance of which has been designated by the governing body of such county for transfer to the public health trust of that county. The section specifies that sanatoriums, clinics, ambulatory care centers, primary care centers, hospitals, rehabilitation centers, health training facilities, nursing homes, nurses’ residence buildings, infirmaries, outpatient clinics, mental health facilities, residences for the aged, rest homes, health care administration buildings, and parking facilities and areas serving health care facilities are considered designated facilities.

<sup>2</sup> Section 386.202, F.S.

## Florida Constitution

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an “enclosed indoor workplace,” in part, as “any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers . . . without regard to whether work is occurring at any given time.” The amendment defines “work” as “any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.” The amendment provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof,” retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directed the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations; provided for administrative enforcement; and required and authorized agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

## Florida’s Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, L.O.F., which amended pt. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment’s prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace, unless the act provides an exception. The act adopts and implements the amendment’s definitions and adopts the amendment’s exceptions for private residences whenever not being used for certain commercial purposes;<sup>3</sup> stand-alone bars;<sup>4</sup> designated smoking rooms in hotels and other public lodging establishments;<sup>5</sup> and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.<sup>6</sup>

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department’s specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

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<sup>3</sup> Section 386.2045(1), F.S. *See also* definition of the term “private residence” in s. 386.203(1), F.S.

<sup>4</sup> Section 386.2045(4), F.S. *See also* definition of the term “stand-alone bar” in s. 386.203(11), F.S.

<sup>5</sup> Section 386.2045(3), F.S. *See also* definition of the term “designated guest smoking room” in s. 386.203(4), F.S.

<sup>6</sup> Section 386.2045(2), F.S. *See also* definition of the term “retail tobacco shop” in s. 386.203(8), F.S.



Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.<sup>7</sup> The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine in the amount of not more than \$100 for a first violation and not more than \$500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

### **Smoking Prohibited Near School Property**

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

### **Enforcement**

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of s. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.<sup>8</sup>

If a person fails to comply with the directions on the citation, the person would waive his or her right to contest the citation and an order to show cause may be issued by the court.<sup>9</sup>

### **Regulation of Smoking Preempted to State**

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state’s preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.<sup>9</sup> The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of

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<sup>7</sup> The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

<sup>8</sup> Section 386.212(3), F.S.

<sup>9</sup> Section 386.212(4), F.S.

<sup>9</sup> Op. Att’y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att’y Gen. Fla. 2005-63 (November 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

s. 386.209, F.S.,<sup>10</sup> to authorize school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

### **III. Effect of Proposed Changes:**

CS/SB 562 allows a municipality or county to restrict smoking within the boundaries of any public parks owned by the municipality or county and allows a county to restrict smoking within any designated facility<sup>10</sup> owned by the county. Current law restricts smoking within a health care facility as it would qualify as a place of employment under the Florida Clean Indoor Air Act. The provision in the bill allowing a county to restrict smoking in “designated facilities” will also allow a county to further restrict smoking in the area around a county owned health care facility that is designated for transfer to the public health trust of the county.<sup>11</sup> Specifically, a county will be allowed to restrict smoking in the parking facilities and any other areas serving such health care facility.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

Municipal and county governments that opt to restrict smoking in public parks or designated facilities may incur indeterminate expenses related to the enacting and enforcing the ordinance.

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<sup>10</sup> Chapter 2011-108, L.O.F.

<sup>10</sup> Supra note 1

<sup>11</sup> Currently, the only public health trust is the Public Health Trust of Miami-Dade County which is part of the Jackson Health System.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 386.209 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs on January 16, 2018:**

Allows counties to restrict smoking within any designated facility they own as defined in s. 154.08, F.S., which includes, but is not limited to, clinics, primary care centers, nursing homes, parking facilities, and the like.

- B. **Amendments:**

None.



362554

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/07/2018	.	
	.	
	.	
	.	

---

The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 16 - 20

and insert:

smoking within a playground area in any public parks they own;  
counties may further restrict smoking within any designated  
facility that they own, as defined in s. 154.08; and school  
districts may further restrict smoking ~~by persons~~ on school  
district property. For purposes of this section, the term  
"playground" means an area in the park that is designated for  
children and has one or more play structures.



362554

12  
13  
14  
15  
16  
17  
18

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 5

and insert:

the playground areas of certain public parks and  
designated facilities; defining the term "playground";

By the Committee on Community Affairs; and Senator Mayfield

578-02148-18

2018562c1

1                                   A bill to be entitled  
2       An act relating to regulation of smoking; amending s.  
3       386.209, F.S.; authorizing municipalities and counties  
4       to further restrict smoking within the boundaries of  
5       certain public parks and designated facilities;  
6       providing an effective date.  
7  
8   Be It Enacted by the Legislature of the State of Florida:  
9  
10       Section 1. Section 386.209, Florida Statutes, is amended to  
11       read:  
12       386.209 Regulation of smoking preempted to state.—This part  
13       expressly preempts regulation of smoking to the state and  
14       supersedes any municipal or county ordinance on the subject;  
15       however, municipalities and counties may further restrict  
16       smoking within the boundaries of any public parks they own;  
17       counties may further restrict smoking within any designated  
18       facility that they own, as defined in s. 154.08; and school  
19       districts may further restrict smoking ~~by persons~~ on school  
20       district property.  
21       Section 2. This act shall take effect July 1, 2018.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR DEBBIE MAYFIELD**  
17th District

January 31, 2017

The Honorable Lizbeth Benacquisto  
Chair, Rules  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Re: SB 562

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 562, a bill relating to Regulation of Smoking, be placed on the agenda for your committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,

A handwritten signature in cursive script that reads "Debbie Mayfield".

Senator Debbie Mayfield  
District 17

Cc: John Phelps, Cynthia Futch, Matthew Hunter, Timothy Morris

REPLY TO:

- 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore

**COMMITTEES:**

Education, Vice Chair  
Government Oversight & Accountability, Vice Chair  
Appropriations Subcommittee on the  
Environment and Natural Resources  
Appropriations subcommittee on General  
Government  
Agriculture  
Judiciary

**JOINT COMMITTEES:**

Joint Legislative Auditing Committee,  
Alternating Chair

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

0562

Bill Number (if applicable)

362554

Amendment Barcode (if applicable)

Topic Regulating Smoking in a Public Park

Name Mark K Ryan

Job Title City Manager

Address 2055 S. Patrick Dr.

Phone 321 773-3181

Indian Harbour Beach FL 32937

Street

City

State

Zip

Email mryan@indianharbour.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing City of Indian Harbour Beach

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7/7/18  
Meeting Date

562  
Bill Number (if applicable)

362554  
Amendment Barcode (if applicable)

Topic BRANDS AMENDMENT

Name Carolyn Cooper

Job Title City Commissioner

Address Park Ave  
Street

Phone 407.222.7766

Winter Park FL 32789  
City State Zip

Email cooper@cityofwinterpark.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Winter Park

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

562

Bill Number (if applicable)

362554

Amendment Barcode (if applicable)

Topic Breeder Amendment

Name Lydia Pisano

Job Title Mayor, City of Belle Isle

Address 1600 Nela Ave

Street

Phone 407-579-0760

Belle Isle, FL 32809

City

State

Zip

Email lpisano@cobifi.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing City of Belle Isle

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18  
Meeting Date

502  
Bill Number (if applicable)

362 554  
Amendment Barcode (if applicable)

Topic BRANDES AMENDMENT

Name DALE McDONALD

Job Title MAYOR

Address 1776 INDEPENDENCE LANE

Phone (407) 539-6219

Street MAITLAND State FL Zip 32781

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CITY OF MAITLAND

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18  
Meeting Date

562  
Bill Number (if applicable)  
362 554  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Casey Cook

Job Title B Legislative Advocate

Address PO Box 1757  
Street

Phone \_\_\_\_\_

Tallahassee FL 32302  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-7-2018

Meeting Date

SB 0562

Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Suzanne Floyd

Job Title Town Clerk - Town of Caryville

Address 4436 Old Spanish Trail

Phone 850-548-5571

Street

Caryville

FL

State

32427

Zip

Email townofcaryville@gmail.com

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against

(The Chair will read this information into the record.)

Representing Town of Caryville

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

5B0562

Bill Number (if applicable)

Topic Smoking

Amendment Barcode (if applicable)

Name Drinda Merrill

Job Title MAYOR

Address 135 Hwy 40 West  
Street

Phone 352-229-0474

Englis, FL 34449  
City State Zip

Email mayerdrinda.merrill@gmail.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Town of Englis

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

562

Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S. Andrews Ave.

Phone 954-789-9293

Street

H. Lauderdale

FL

33301

City

State

Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [x] In Support [ ] Against (The Chair will read this information into the record.)

Representing Broward County

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18  
Meeting Date

0562  
Bill Number (if applicable)

Topic Regulation of Smoking in Parks Amendment Barcode (if applicable)

Name MARK K RYAN

Job Title City Manager

Address 2055 S. Patrick Dr. Phone 321 773-3181

Indian Harbour Beach FL 32937 Email mryan@indianharbour.org  
City State Zip

Speaking:  For  Against  Information Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing City of Indian Harbour Beach

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

562

Bill Number (if applicable)

Topic SMOKING

Amendment Barcode (if applicable)

Name CASEY COOK

Job Title Legislative Advocate

Address PO Box 1757

Phone

Street

Tallahassee FL 32302

City

State

Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [x] In Support [ ] Against (The Chair will read this information into the record.)

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [ ] No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb. 7, 2018

562

*Meeting Date*

*Bill Number (if applicable)*

Topic Regulation of Smoking

*Amendment Barcode (if applicable)*

Name David Cullen

Job Title \_\_\_\_\_

Address 1674 University Pkwy #296

Phone 941-323-2404

*Street*

Sarasota

FL

34243

Email cullenasea@aol.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Sierra Club Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

SB 562

Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Robert Lewis

Job Title Director, Intergovernmental Relations

Address 1660 Ringling Blvd

Phone 941-444-9532

Street

SARASOTA FL 34236

City

State

Zip

Email rlewis@scgov.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing SARASOTA COUNTY GOVERNMENT

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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APPEARANCE RECORD

2-7-18

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

562

Meeting Date

Bill Number (if applicable)

Topic Tobacco Regulation

Amendment Barcode (if applicable)

Name Matt Jordan

Job Title GRD

Address 1922 Dellwood Dr

Phone 850-514-2501

Street

Tallahassee FL 32303

City

State

Zip

Email matt.jordan@cancer.org

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against (The Chair will read this information into the record.)

Representing American Cancer Society Cancer Action Net

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

562

Bill Number (if applicable)

Topic REGULATION OF SMOKING

Amendment Barcode (if applicable)

Name LISA HURLEY

Job Title

Address 301 B. Park Ave

Phone 724.5081

Street Tallahassee FL 32301

Email

City State Zip

Speaking: [X] For [ ] Against [ ] Information

[X] Waive Speaking: [X] In Support [ ] Against

(The Chair will read this information into the record.)

Representing FLORIDA ASSOC. OF COUNTIES

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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# APPEARANCE RECORD

Feb. 7, 18

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

562

Bill Number (if applicable)

Topic Smoking

Amendment Barcode (if applicable)

Name Toni Large

Job Title \_\_\_\_\_

Address 519 E. Park Ave

Phone (850) 556-1461

Tallahassee, FL 32308

Email toni@sulaw.net

City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Society of Respiratory Therapists  
CARE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18

Meeting Date

562

Bill Number (if applicable)

Topic SMOKING

Amendment Barcode (if applicable)

Name A. DALE McDONALD

Job Title MAYOR

Address 1776 INDEPENDENCE LANE

Phone (407) 929-2414

Street MAITLAND FL

Email DMCDONALD@MAITLANDFL.COM

City MAITLAND State FL Zip 32751

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing CITY OF ~~MAITLAND~~ MAITLAND

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/18 Meeting Date

562 Bill Number (if applicable)

Topic Smoking in Parks

Amendment Barcode (if applicable)

Name CARRIE COOPER COOPER

Job Title Commissioner

Address 1047 McKean Street

Phone 407.222.7766

City Winter Park FL State Zip

Email ccooper@cityofwinterpark.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [x] In Support [ ] Against (The Chair will read this information into the record.)

Representing Winter Park

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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# APPEARANCE RECORD

2/7/18

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

562

Meeting Date

Bill Number (if applicable)

Topic Smoking

Amendment Barcode (if applicable)

Name Lydia Pisano

Job Title MAYOR, City of Belle Isle

Address 1600 Nela Ave

Phone 407-579-0760

Street

Belle Isle, FL 32809

Email lpisano@cobifl.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing City of Belle Isle

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

562  
Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic

Name Melissaviller

Job Title

Address Street

Phone

City State Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Norm Tallahassee

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 670

INTRODUCER: Senators Baxley and Bradley

SUBJECT: Ratification of Rules of the St. Johns River Water Management District

DATE: February 6, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	<b>Favorable</b>
2.	<u>Mitchell</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 670 ratifies Florida Administrative Code Rule 40C-2.101, which adds regulatory measures for Silver Springs to the Consumptive Use Permit Applicant’s Handbook. These measures are a component of the Silver Springs prevention strategy to ensure that flows and levels within Silver Springs do not fall below the recently adopted minimum flows and levels (MFLs) during the next 20 years.

**II. Present Situation:**

**Florida’s Springs**

Florida’s springs are unique and beautiful resources. The historically crystal clear waters provide not only a variety of recreational opportunities and habitats, but also great economic value for recreation and tourism. Springs are major sources of stream flow in a number of rivers such as the Rainbow, Chassahowitzka, Homosassa, and Ichetucknee.<sup>1</sup> Additionally, Florida’s springs provide a “window” into the Floridan aquifer system, which provides most of the state’s drinking water.

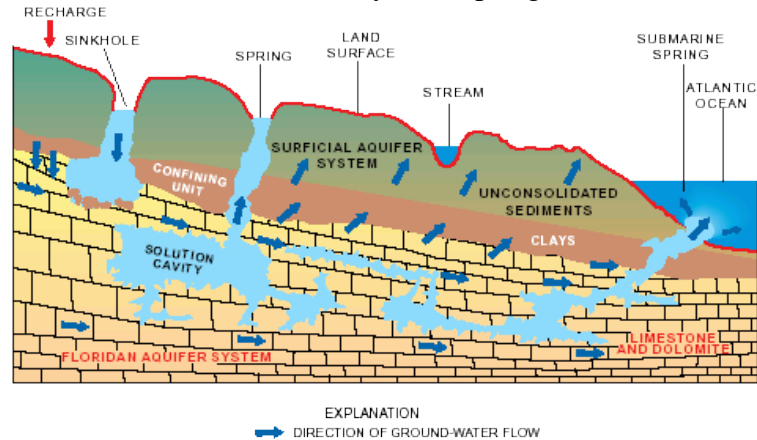
The Floridan aquifer system is a limestone aquifer that has enormous freshwater storage and transmission capacity. The upper portion of the aquifer consists of thick carbonate rocks that have been heavily eroded and covered with unconsolidated sand and clay. The surficial aquifer is located within the sand deposits and forms the land surface that is present today. In portions of Florida, the surficial aquifer lies on top of deep layers of clay sediments that prevent the downward movement of water. Springs form when groundwater is forced out through natural openings in the ground.<sup>2</sup>

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<sup>1</sup> Department of Community Affairs, *Protecting Florida’s Springs: An Implementation Guidebook*, 3-1 (Feb. 2008), available at <http://www.sarasota.wateratlas.usf.edu/upload/documents/Protecting-Floridas-Springs-Implementation-Guidebook.pdf> (last visited December 19, 2017).

<sup>2</sup> *Id.* at 3-1 to 3-2.

### The Water Cycle – Springs<sup>3</sup>



Florida has more than 700 recognized springs, categorized by flow in cubic feet per second. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day. Spring discharges, primarily from the Floridan aquifer, are used to determine groundwater quality and the degree of human impact on a spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to groundwater chemistry.<sup>4</sup>

The springshed is the area within the groundwater and surface water basins that contributes to the discharge of the spring. The spring recharge basin consists of all areas where water can be shown to contribute to groundwater flow discharging from the spring.

Spring protection zones are sub-areas of the groundwater and surface water basins of each spring or spring system that supply water to the spring and within which human activities, such as waste disposal or water use, are most likely to negatively impact the water discharging from the spring. When adverse conditions occur within a spring protection zone, these conditions can be minimized by:

- Land-use management and zoning regulations adopted by county or municipal government;
- Adoption of best management practices (BMPs);
- Educating the public concerning environmental sensitivity; and
- Regulatory action, if necessary.<sup>5</sup>

<sup>3</sup> EPA, *The Water Cycle: Springs*, available at <http://water.usgs.gov/edu/watercyclesprings.html> (last visited November 17, 2017).

<sup>4</sup> Florida Geological Survey, *Springs of Florida Bulletin No. 66*, available at [http://publicfiles.dep.state.fl.us/FGS/FGS\\_Publications/B/B66\\_2004.pdf](http://publicfiles.dep.state.fl.us/FGS/FGS_Publications/B/B66_2004.pdf) (last visited January 4, 2018).

<sup>5</sup> Upchurch, S.B. and Champion, K.M., *Delineation of Spring Protection Areas at Five, First-Magnitude Springs in North-Central Florida (Draft)*, 1 (Apr. 28, 2004), available at [www.waterinstitute.ufl.edu/suwannee-hydro-observ/pdf/delineation-of-spring-protection-zones.pdf](http://www.waterinstitute.ufl.edu/suwannee-hydro-observ/pdf/delineation-of-spring-protection-zones.pdf) (last visited November 17, 2017). See also chs. 373 and 403, Florida Statutes (F.S.)

### Minimum Flows and Levels (MFLs)

MFLs are established for waterbodies in order to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals.<sup>6</sup> MFLs are typically determined based on evaluations of natural seasonal fluctuations in water flows or levels, nonconsumptive uses, and environmental values associated with coastal, estuarine, riverine, spring, aquatic, wetlands ecology, and other pertinent information associated with the water resource.<sup>7</sup> MFLs take into account the ability of wetlands and aquatic communities to adjust to changes in hydrologic conditions and allow for an acceptable level of hydrologic change to occur. When uses of water resources shift the hydrologic conditions below levels defined by MFLs, significant ecological harm can occur.<sup>8</sup> The goal of establishing an MFL is to ensure that there is enough water to satisfy the consumptive use of the water resource without causing significant harm to the resource.<sup>9</sup> Consumptive uses of water draw down water levels and reduce pressure in the aquifer.<sup>10</sup> By establishing MFLs for non-consumptive uses, the WMDs are able to determine how much water is available for consumptive use. This is useful when evaluating new or renewal consumptive use permit (CUP) applications.<sup>11</sup>

While the DEP has the authority to adopt MFLs under ch. 373, Florida Statutes (F.S.), the WMDs have the primary responsibility for MFL adoption. The WMDs submit annual MFL priority lists and schedules to the DEP for review and approval. MFLs are calculated using the best information available,<sup>12</sup> are considered rules by the WMDs, and are subject to challenge under the Florida Administrative Procedures Act, ch. 120, F.S.<sup>13</sup> MFLs are subject to independent scientific peer review at the election of the DEP, a WMD, or, if requested, by a third party.<sup>14</sup>

MFLs inform decisions affecting permit applications, declarations of water shortages, and assessments of water supply sources. Computer water budget models for surface waters and groundwater are used to evaluate the effects of existing and proposed consumptive uses and the likelihood they might cause significant harm. The WMD governing boards are required to expeditiously implement recovery or prevention strategies in those cases where a waterbody or watercourse currently does not or is anticipated to not meet an adopted MFL.<sup>15</sup> If the existing flow or water level in a waterbody is below, or is projected to fall within 20 years below, the applicable minimum flow or water level, the DEP or WMD must expeditiously implement a

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<sup>6</sup> Section 373.042, F.S.

<sup>7</sup> Fla. Admin. Code R. 62-40.473(1).

<sup>8</sup> St. Johns River Water Management District (SJRWMD), *Water Supply: An Overview of Minimum Flows and Levels*, available at <http://www.sjrwmd.com/minimumflowsandlevels/> (last visited November 17, 2017).

<sup>9</sup> Department of Environmental Protection (DEP), *Minimum Flows and Minimum Water Levels and Reservations*, available at <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited January 4, 2018).

<sup>10</sup> Department of Community Affairs, *Protecting Florida's Springs: An Implementation Guidebook*, 3-5 (Feb. 2008), available at <http://www.sarasota.wateratlas.usf.edu/upload/documents/Protecting-Floridas-Springs-Implementation-Guidebook.pdf> (last visited December 19, 2017).

<sup>11</sup> SJRWMD, *Minimum flows and levels*, available at <https://www.sjrwmd.com/minimumflowsandlevels/#faq> (last visited January 4, 2018).

<sup>12</sup> Section 373.042(1), F.S.

<sup>13</sup> Section 373.042(6), F.S.

<sup>14</sup> Section 373.042(5)(a), F.S.

<sup>15</sup> Section 373.0421(2), F.S.

recovery or prevention strategy.<sup>16</sup> Recovery or prevention strategies include a phased-in approach or timetable that allows for the development of sufficient water supplies for all existing and projected reasonable-beneficial uses. The strategy also includes development of additional water supplies and implementation of conservation strategies, the use of impact offsets, and other efficiency measures to accommodate withdrawals.<sup>17</sup>

### **Consumptive Use Permits (CUPs)**

A CUP establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the DEP and may not be harmful to the water resources of the area. To obtain a CUP, an applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as “the three-prong test.” Specifically, the proposed water use must:

- Be a “reasonable-beneficial use”;<sup>18</sup>
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.<sup>19</sup>

If two or more competing applications qualify equally, the applicable WMD or the DEP must give preference to a renewal application over an initial application and if neither are renewal applications, preference must be given to the application where the source is nearest to the area of use or application.<sup>20</sup>

### **Alternative Water Supply Development**

One of the ways water demands can be met is through the development of alternative water supplies (AWS).<sup>21</sup> Alternative water supplies include:

- Salt water;
- Brackish surface water and groundwater;
- Sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses;
- The downstream augmentation of waterbodies with reclaimed water;
- Stormwater; and
- Any other water supply source that is designated as a nontraditional source for a water supply planning region in a regional water supply plan.<sup>22</sup>

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<sup>16</sup> Section 373.0421, F.S. See also Fla. Admin. Code R. 62-40.473 (2013).

<sup>17</sup> *Id.*

<sup>18</sup> Section 373.019(16), F.S., defines reasonable-beneficial use as, “the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.” See also Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.

<sup>19</sup> Section 373.223(1), F.S.

<sup>20</sup> Section 373.233(2), F.S.

<sup>21</sup> Sections 373.707(1)(a)-(b) and 373.1961(2)(a), F.S.

<sup>22</sup> Section 373.019(1), F.S.

Funding for the development of AWSs is a shared responsibility between water suppliers and users, the state, and the WMDs.<sup>23</sup> Water suppliers and users have the primary responsibility for providing funding, while the state and WMDs have the responsibility to provide funding assistance.<sup>24</sup>

AWS development projects may receive state funding through specific appropriation or through the Water Protection and Sustainability Program (WPSP).<sup>25</sup> Applicants for projects that receive funding through the WPSP are required to pay at least 60 percent of the project's construction costs.<sup>26</sup> A WMD may waive this requirement for projects developed by financially disadvantaged small local governments. Additionally, a WMD may, at its discretion, use ad valorem or federal revenues to assist a project applicant in meeting the match requirement.<sup>27</sup>

### **Regional Water Supply Planning**

WMDs are required to conduct water supply needs assessments. If the assessment determines that existing resources will not be sufficient to meet reasonable-beneficial uses for the planning period for a particular water supply planning region, it must prepare a regional water supply plan.<sup>28</sup> Regional water supply plans must be based on at least a 20-year planning period and must include:

- A water supply development component;
- A water resource development component;
- A recovery and prevention strategy;
- A funding strategy;
- Consideration of how water supply development projects serve the public interest or save costs;
- Technical data and information;
- Any MFLs established for the planning region;
- The water resources for which future MFLs must be developed; and
- An analysis of where variances may be used to create water supply development or water resource development projects.<sup>29</sup>

### **The Prevention Strategy for the Implementation of Silver Springs Minimum Flows and Levels (Strategy)**

In 2016, the Legislature passed Senate Bill 552 which defined “Outstanding Florida Springs”(OFS) to include all historic first magnitude springs, and their associated spring runs, as determined by DEP using the most recent version of the Florida Geological Survey's springs bulletin.<sup>30</sup> The bill required WMDs, by July 1, 2017, to adopt MFLs for all OFSs for which an

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<sup>23</sup> Section 373.707(2)(c), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 373.707(1)(d), and (6), F.S.

<sup>26</sup> Section 373.707(8)(e), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 373.709(1), F.S.

<sup>29</sup> Section 373.709(2), F.S.

<sup>30</sup> Section 373.802(4), F.S.

MFL had not yet been adopted.<sup>31</sup> Senate Bill 552 also directed either a WMD or DEP to adopt a recovery or prevention strategy concurrently with the adoption of an MFL for an OFS, if it is below, or projected within 20 years to fall below, the MFL.<sup>32</sup> Additionally, the bill provided minimum requirements for recovery and prevention strategies for OFSs.<sup>33</sup>

Silver Springs, located in Marion County and within the boundaries of the St. Johns River Water Management District (SJRWMD), is a first magnitude spring<sup>34</sup> and is designated as an OFS. The SJRWMD evaluated the recommended MFLs for Silver Springs based on current and projected water use conditions. It was determined that the MFLs are currently being met, but will not be achieved over the next 20 years, triggering the requirement for a prevention strategy.<sup>35</sup> In its Prevention Strategy for the Implementation of Silver Springs Minimum Flows and Levels (Strategy), the district concluded that, based on current projections and permitted allocations, the sustainable groundwater yield (SGY)<sup>36</sup> of the SJRWMD-portion of Marion County will be exceeded between 2025 and 2026.<sup>37</sup>

Consistent with the provisions for establishing and implementing MFLs provided for in section 373.0421, F.S., the Strategy identifies a suite of projects and measures that, when implemented, prevents the Silver Springs MFLs from being violated due to consumptive uses of water, while simultaneously providing sufficient water supplies for all existing and projected reasonable beneficial uses.<sup>38</sup>

The objective of the Strategy is to ensure that flows and levels within Silver Springs do not fall below adopted MFLs during the next 20 years. In order to achieve this objective, the Strategy establishes and maintains groundwater withdrawals at or below the SGY through:

- Water conservation and water supply development projects; or
- By mitigating the impact of groundwater withdrawals on Silver Springs through water resource development projects.<sup>39</sup>

To meet the statutory requirements<sup>40</sup> of an OFS prevention strategy, the Strategy contains the following information:

- A listing of all specific projects and measures identified for implementation of the strategy;
- A priority listing of each project;
- The estimated cost and date of completion for each project;

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<sup>31</sup> Section 373.042(2)(a), F.S.

<sup>32</sup> Section 373.805(1), F.S.

<sup>33</sup> Section 373.805(4), F.S.

<sup>34</sup> Section 373.802(4), F.S.

<sup>35</sup> SJRWMD, *Prevention Strategy for the Implementation of Silver Springs Minimum Flows and Levels (Strategy)* (April 2017) 1, available at <https://www.sjrwmd.com/static/mfls/ssmfl/Silver-Springs-Prevention-Strategy.pdf> (last visited December 19, 2017).

<sup>36</sup> For purposes of this Strategy, the sustainable groundwater yield is defined as the quantity of groundwater from the Upper Floridan aquifer which can be withdrawn without causing significant harm to Silver Springs (i.e., violate its MFLs).

<sup>37</sup> SJRWMD, *Strategy* (April 2017) 6, available at <https://www.sjrwmd.com/static/mfls/ssmfl/Silver-Springs-Prevention-Strategy.pdf> (last visited December 19, 2017).

<sup>38</sup> *Id.* at 1.

<sup>39</sup> *Id.* at 2.

<sup>40</sup> Section 373.805(4), F.S.



- The source and amount of financial assistance offered by the SJRWMD;
- An estimate of each project’s benefit to the OFS; and
- An implementation plan to achieve the adopted MFLs.<sup>41</sup>

Groundwater withdrawals within Marion County contribute to the majority of the pumping-related impacts to Silver Springs. The Strategy focuses primarily on projects and measures within the county boundary where their benefits will be the greatest. The proposed projects and regulatory component listed within the Strategy provide assurance that the MFLs for Silver Springs will be achieved while meeting projected 2035 water use demand and permitted withdrawal quantities<sup>42</sup> (PQ). The projects outlined in the Strategy include the expansion of reclaimed water, aquifer recharge, and conversion from the upper Floridan aquifer (UFA) to the lower Floridan aquifer (LFA) as a primary source of water for a portion of public supply demands.<sup>43</sup> The table included below, taken from the Strategy,<sup>44</sup> depicts the estimated volume and flow benefits to Silver Springs from the four general measures to be employed to ensure that MFLs are maintained:

Table 5. Strategy projects and measures to achieve Silver Springs MFLs in 2035

Project/Measure	Est. Volume (mgd)	Est. Silver Springs Flow Benefit (cfs)	Est. Capital Cost (\$)	Implementation Priority
	Low / High	Low / High	Low / High	
Water Conservation	4.4 / 7.6	1.9 / 4.2	9.6M / 13.1M	1
Aquifer Recharge	2.9	1.4	8.0M	2
Ocala LFA Conversion	7.5	7.0	6.7M - 31.7M	3
Reclaimed water conversion	1.9*	0.5	3.2M	4
TOTAL	16.7 / 19.9	10.8 / 13.1	27.5M / 56.0M	

\* Total reclaimed water available in 2035 (less the 2.9 mgd planned for recharge). Actual groundwater offset is less.

**Prevention Strategy: Regulatory Component**

In addition to rules currently in place, the Strategy includes a regulatory component, which appears in a new Section 3.3.3 of the CUP Applicant’s Handbook (AH), which was adopted as a rule in 40C-2.101, Florida Administrative Code (the rule that would be ratified by this bill). The

<sup>41</sup> SJRWMD, *Strategy* (April 2017) 1, available at <https://www.sjrwmd.com/static/mfls/ssmfl/Silver-Springs-Prevention-Strategy.pdf> (last visited December 19, 2017).

<sup>42</sup> Permitted withdrawal quantities represents a groundwater model simulation where withdrawals are equal to the allocations authorized by existing consumptive use permits. Exceptions within the Northern District Groundwater Flow Model Version 5.0 include permitted agricultural allocations which were adjusted to better reflect average irrigation, and domestic self-supply (a use exempt from permitting) and subthreshold agricultural use (authorized via a general permit by rule), which were both estimated using 2035 projected demand.

<sup>43</sup> SJRWMD, *Strategy* (April 2017) 1, available at <https://www.sjrwmd.com/static/mfls/ssmfl/Silver-Springs-Prevention-Strategy.pdf> (last visited December 19, 2017).

<sup>44</sup> *Id.* at 8.

regulatory component of the Strategy will ensure that the MFL will not be violated by consumptive uses of water permitted by the SJRWMD. Specifically, the new rules will:

- Allow existing permitted uses to retain reasonable-beneficial groundwater allocations up to their demonstrated 2024 demand;
- Require potential impacts to Silver Springs to be offset for groundwater allocation requests greater than the demonstrated 2024 demand and for new uses;
- Define a series of opportunities for permittees to offset potential impacts by implementing alternative water supplies, impact offset projects, water resource development project participation, and the retiring of water use from existing CUPs;
- Authorize the inclusion of irrigation allocations for average climatic conditions in addition to drought conditions, for landscape, recreational, and agricultural irrigation CUPs; and
- Outline a process by which permittees can relocate existing permitted withdrawals to reduce impacts to Silver Springs.<sup>45</sup>

### ***Prevention Strategy: Nonregulatory Component***

The non-regulatory part of SJRWMD's Strategy includes a commitment by the SJRWMD to assist with two water supply development projects (Lower Floridan Aquifer Conversion and Wetland Recharge Park), which will reduce potential impacts to Silver Springs and make more groundwater available from the UFA. The SJRWMD is required to pay at least 25 percent of the total project costs for each of the projects identified in the non-regulatory part of the Strategy.<sup>46</sup> The SJRWMD's share of the cost of the Lower Floridan Conversion Project is estimated to be at least \$1.8 million. The SJRWMD's total costs for 25 percent of all Strategy projects (including non-regulatory projects) will be approximately \$14 million.<sup>47</sup> That significant commitment by the SJRWMD will result in lower costs for the regulated public to achieve the Silver Springs MFLs than if the SJRWMD did not commit to assisting both projects.<sup>48</sup>

### **Legislative Ratification of Agency Rules**

Pursuant to s. 120.541(3), F.S., the Legislature must ratify a rule that:

- Has an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;
- Has an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after the implementation of the rule; or
- Increases regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.<sup>49</sup>

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<sup>45</sup> *Id.* at 14.

<sup>46</sup> Section 373.805(4)(d), F.S.

<sup>47</sup> SJRWMD, *Statement of Estimated Regulatory Costs (SERC)*, 5 (on file with the offices of the Senate Committee on Environmental Preservation and Conservation).

<sup>48</sup> *Id.* at 1.

<sup>49</sup> Section 120.541(2)(a), F.S.

If a rule requires ratification by the Legislature, the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the regular legislative session. The rule may not go into effect until it is ratified by the Legislature.<sup>50</sup> Florida Administrative Code Rule 40C-2.101, amended to include the regulatory component of the Strategy in new Section 3.3.3 of the CUP AH, is a rule that requires ratification by the Legislature pursuant to s. 120.541(3), F.S.

A statement of estimated regulatory costs (SERC) is an analysis prepared by an agency before the adoption, amendment, or repeal of a rule other than an emergency rule. A SERC must include:

- An economic analysis showing whether the rule exceeds the thresholds requiring legislative ratification;
- A good faith estimate of the number and types of individuals and entities likely to be required to comply with the rule;
- A good faith estimate of the cost to the agency, and to other state and local government entities, of implementing and enforcing the proposed rule, including anticipated effects on state or local revenues;
- A good faith estimate of the transactional costs (direct business costs) likely to be incurred by individuals and entities required to comply with the requirements of the rule;
- An analysis of the impact on small businesses, small counties, and small cities; and
- A description of regulatory alternatives submitted to the agency and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.<sup>51</sup>

A SERC must be prepared by an agency for a proposed rule that:

- Will have an adverse impact on small business; or
- Is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the state within 1 year after the implementation of the rule.<sup>52</sup>

The SJRWMD determined that a statement of estimated regulatory costs was required for Florida Administrative Code Rule 40C-2.101 and prepared one in advance of rule adoption. The SJRWMD found that the underlying rule that would be ratified by this bill will increase regulatory costs for water users who seek to increase their permitted use of groundwater from the UFA beyond their 2024 water demand. When an applicant seeks to increase its permitted water use from the UFA (which would include brand new users), it will incur higher costs for its additional water use within the Silver Springs area as compared to its existing permitted water use costs. The underlying rule will cause an adverse impact on some businesses who seek to increase their permitted water use beyond their 2024 water demand.<sup>53</sup>

It is projected that in the next five years the SJRWMD will receive a total of approximately 335 CUP applications affecting the minimum water flows and levels for Silver Springs in

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<sup>50</sup> Section 120.541(3), F.S.

<sup>51</sup> Section 120.541(2), F.S.

<sup>52</sup> Section 120.54(3)(b)1., F.S.

<sup>53</sup> SJRWMD, *SERC*, 2 (on file with the offices of the Senate Committee on Environmental Preservation and Conservation).

Florida Administrative Code Rule 40C-8.031(10). Out of those 335 CUP applications, the SJRWMD estimates that 46 CUP applicants will likely request an increase in permitted water use for which there will be an increased regulatory cost under Florida Administrative Code Rule 40C-2.101 (the rule SB 670 would ratify).<sup>54</sup> SJRWMD estimates \$5.42 million to \$27.17 million in total new one-time capital costs within five years of the implementation of the rule. SJRWMD estimates \$17.8 million in recurring costs over the same time period for a total cost of \$23.22 million to \$44.97 million.<sup>55</sup>

### III. Effect of Proposed Changes:

The bill ratifies Florida Administrative Code Rule 40C-2.101, entitled “Publications Incorporated by Reference” which is amended to add supplemental regulatory measures for Silver Springs to the Consumptive Use Permit Applicant’s Handbook. These measures are a component of the overall Strategy that attempt to ensure that flows and levels within Silver Springs do not fall below adopted MFLs during the next 20 years.

The bill also:

- Ratifies Florida Administrative Code Rule 40C-2.101, for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.;
- Requires the DEP to note its enactment and effective dates in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate;
- Does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule; and
- Does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

The bill will take effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>54</sup> *Id.* at 2.

<sup>55</sup> *Id.* at 3, 4.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The underlying rule that would be ratified will increase regulatory costs for water users who seek to increase their permitted use of groundwater from the UFA beyond their 2024 water demand. When an applicant seeks to increase its permitted water use from the UFA (which would include brand new users), it will incur higher costs for its additional water use within the Silver Springs area as compared to its existing permitted water use costs. Thus, the underlying rule will cause an adverse impact on some businesses who seek to increase their permitted water use beyond their 2024 water demand.<sup>56</sup>

It is projected that in the next five years the SJRWMD will receive a total of approximately 335 CUP applications affecting the minimum water flows and levels for Silver Springs in Florida Administrative Code Rule 40C-8.031(10). Out of those 335 CUP applications, the SJRWMD estimates that 46 CUP applicants will likely request an increase in permitted water use for which there will be an increased regulatory cost under Florida Administrative Code Rule 40C-2.101 (the rule SB 670 would ratify).<sup>57</sup> SJRWMD estimates \$5.42 million to \$27.17 million in total new one-time capital costs within five years of the implementation of the rule. SJRWMD estimates \$17.8 million in recurring costs over the same time period for a total cost of \$23.22 million to \$44.97 million.<sup>58</sup>

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of Florida law.

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<sup>56</sup> SJRWMD, *SERC*, 2 (on file with the offices of the Senate Committee on Environmental Preservation and Conservation).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 3, 4.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senators Baxley and Bradley

5-00743-18

2018670\_\_

A bill to be entitled

An act relating to ratification of rules of the St. Johns River Water Management District; ratifying a specified rule relating to supplemental regulatory measures for the minimum flows and levels of Silver Springs, designated as an Outstanding Florida Spring under s. 373.802(4), F.S., for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds of likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying the legislative ratification requirement of s. 120.541(3), Florida Statutes: Rule 40C-2.101, Florida Administrative Code, entitled "Publications Incorporated by Reference" as filed for adoption with the Department of State pursuant to the certification package dated August 1, 2017.

(2) This act serves no other purpose and shall not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

5-00743-18

2018670\_\_

governing adoption or enforcement of the rules cited, and is intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



## THE FLORIDA SENATE

**SENATOR DENNIS BAXLEY**  
12th District

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Criminal Justice, *Vice Chair*  
*Appropriations*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and  
Human Services  
Agriculture  
Transportation

**SELECT COMMITTEE:**  
Joint Select Committee on Collective Bargaining

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

January 9, 2018

The Honorable Senator Lizbeth Benacquisto  
400 Senate Office Building  
Tallahassee, Florida 32399

Dear Senator Benacquisto,

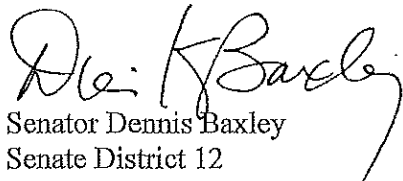
I respectfully request that SB 670 Ratification of Rules of St. Johns River Water Management be placed on your next available agenda.

Senate Bill 670 seeks legislative ratification for a statutorily mandated prevention strategy rule for Silver Springs, established by the St. Johns River Water Management District in accordance with sections 373.0421(2) and 373.805(1), F.S. (2016).

Florida Statutes required the adoption of minimum flows and levels (MFLs) for Silver Springs and other Outstanding Florida Springs by July 1, 2017. Minimum flows and levels for Silver Springs in Marion County define a protective limit on the amount of available water beyond which further groundwater withdrawals would be significantly harmful to Silver Springs.

I appreciate your favorable consideration.

Onward & Upward,

  
Senator Dennis Baxley  
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 7, 2018

670

*Meeting Date*

*Bill Number (if applicable)*

Topic SIERRA CLUB *Amendment Barcode (if applicable)*

Name David Cullen

Job Title \_\_\_\_\_

Address 1674 University Pkwy #296

Phone 941-323-2404

*Street*

Sarasota

FL

34243

Email cullenasea@aol.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Sierra Club Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/2018

Meeting Date

670

Bill Number (if applicable)

Topic Silver Springs Rule Ratification

Amendment Barcode (if applicable)

Name Lisa Kelley

Job Title Chief of Staff

Address 601 S. Lake Destiny Dr.

Phone 407-215-1457

Street

Maitland

FL

32751

City

State

Zip

Email LAKelley@sjawmd.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing St. Johns River Water Mgmt District

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 876

INTRODUCER: Regulated Industries Committee and Senator Bean

SUBJECT: Alarm Verification

DATE: February 6, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Kraemer</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 876 revises s. 489.529, F.S., to require, in most circumstances, two attempts to confirm alarm signals generated by residential or commercial intrusion and burglary alarms systems that have central monitoring, before law enforcement may be contacted for response to the premises generating the alarm.

The bill requires the first attempt to confirm an active alarm signal be made by the central monitoring station, via communication by telephone call, text message, or other electronic means, with a person associated with the premises generating the alarm signal. If the first attempt to confirm the alarm signal is unsuccessful, then the central monitoring station must attempt to confirm the alarm signal a second time, via communication by telephone call, text message, or other electronic means, with the premises owner, an occupant, or an authorized designee.

Under current law, contact with law enforcement for a response to an alarm may not be made unless a “central monitoring verification call” is made to a telephone number associated with the premises,<sup>1</sup> and if that call is not answered, then other, undefined “call-verification methods” for the premises must be employed.

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<sup>1</sup> Section 489.529, F.S., was revised effective October 1, 2017, to require the first verification call be made to a telephone number associated with the premises. See ch. 2017-52, s. 2, Laws of Fla.

## II. Present Situation:

An alarm system is “any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.”<sup>2</sup> An alarm system includes home-automation equipment, thermostats, closed-circuit television systems, and video cameras.<sup>3</sup> Alarm systems contractors must be licensed, have sufficient technical expertise in the trade prior to licensure, and be tested on technical and business matters.<sup>4</sup> Part II of ch. 489, F.S., deals with the licensing of electrical and alarm systems contractors who install such alarms.<sup>5</sup>

### Verification of Intrusion/Burglary Alarm Signals

All residential or commercial intrusion/burglary alarms with central monitoring must have a central monitoring verification call made to a telephone number associated with the premises generating the alarm signal, before alarm monitor personnel may contact a law enforcement agency for dispatch of law enforcement officers to the premises.<sup>6</sup> The central monitoring station must employ call-verification methods for the premises generating the alarm signal, if the first call is not answered.<sup>7</sup>

Verification calling is not required, however, if the intrusion/burglary alarm:

- Has a properly operating visual or auditory sensor that enables the monitoring personnel to verify the alarm signal; or
- Is installed on a premises used for the storage of firearms or ammunition by a customer who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition (licensed firearms dealer),<sup>8</sup> who has notified the alarm monitoring company that he or she would like to bypass the two-call verification protocol.<sup>9</sup>

Upon initiation of a new alarm monitoring service contract, an alarm monitoring company must make reasonable efforts to inform a customer who is a licensed firearms dealer of the right to opt out of the two-call verification protocol.<sup>10</sup>

### Licensed Alarm System Contractors

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the

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<sup>2</sup> See s. 489.505(1), F.S.

<sup>3</sup> See s. 553.793(1)(b), F.S.

<sup>4</sup> See s. 489.501, F.S.

<sup>5</sup> See ss. 489.501 through 489.538, F.S.

<sup>6</sup> See s. 489.529, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) notes that each year, it receives thousands of reports of theft or loss from federally licensed firearms dealers. The steps that the ATF recommends to protect a firearms business include store design measures, after-hours security methods, reinforcement and narrowing of store door and window openings, alarm systems, and 24-hour video camera recording adequate to capture faces and features. See <https://www.atf.gov/firearms/learn-about-firearms-safety-and-security> (last visited Jan. 17, 2018).

<sup>9</sup> See s. 489.529, F.S.

<sup>10</sup> See s. 489.529(2), F.S.

applicable trade, and have been tested on technical and business matters.<sup>11</sup> The Electrical Contractors' Licensing Board (board) in the Department of Business and Professional Regulation (DBPR) implements Part II of ch. 489, F.S.<sup>12</sup>

Section 489.505, F.S., specifies the types of contractors that may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.<sup>13</sup> The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.<sup>14</sup> An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an "alarm system contractor I;" the practice area of an "alarm system contractor II" is identical except it does not include fire alarm systems.<sup>15</sup>

The DBPR may also issue geographically unlimited certificates of competency to an alarm system contractor (certificateholder).<sup>16</sup> The scope of certification is limited to specific alarm circuits and equipment, and no mandatory licensure requirement is created by the availability of a certification.<sup>17</sup>

Part IV of ch. 553, F.S., constitutes the Florida Building Codes Act (act). The act provides a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of the Florida Building Code, consisting of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities, and to the enforcement of such requirements.<sup>18</sup> The Florida Building Code is adopted, modified, updated, interpreted, and maintained by the Florida Building Commission.<sup>19</sup>

Pursuant to s. 553.88, F.S., the current edition of the following standards are in effect to establish minimum electrical and alarm standards in Florida:

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<sup>11</sup> See s. 489.501, F.S.

<sup>12</sup> See ss. 489.507 through 489.517, F.S., concerning the powers and duties of the board.

<sup>13</sup> See s. 489.505(2), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See ss. 489.505(4), 489.505(5), and 489.515(1), F.S.

<sup>17</sup> See s. 489.505(7), F.S., which describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels and equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. With respect to voltage and current, RMS is the abbreviation for "root mean square," a statistical term defined as the square root of mean square. See <http://www.practicalphysics.org/explaining-rms-voltage-and-current.html> (last visited Jan. 17, 2018).

<sup>18</sup> See s. 553.72(1), F.S., which also indicates that effective and reasonable protection for public safety, health, and general welfare at the most reasonable cost to the consumer is also intended.

<sup>19</sup> See s. 553.72(3), F.S.

- National Electrical Code, NFPA<sup>20</sup> No. 70;
- Underwriters' Laboratories, Inc. (UL), Standards for Safety, Electrical Lighting Fixtures, and Portable Lamps, UL 57 and UL 153;
- Underwriters' Laboratories, Inc., Standard for Electric Signs, UL 48;
- The provisions of the following which prescribe minimum electrical and alarm standards:
  - NFPA No. 56A, Inhalation Anesthetics;
  - NFPA No. 56B, Respiratory Therapy;
  - NFPA No. 56C, Laboratories in Health-related Institutions;
  - NFPA No. 56D, Hyperbaric Facilities;
  - NFPA No. 56F, Nonflammable Medical Gas Systems;
  - NFPA No. 72, National Fire Alarm Code; and
  - NFPA No. 76A, Essential Electrical Systems for Health Care Facilities;
- The rules and regulations of the Department of Health, entitled "Nursing Homes and Related Facilities Licensure"; and
- The minimum standards for grounding of portable electric equipment in Florida Administrative Code Rule Chapter 8C-27, as recommended by the Division of Workers' Compensation in the Department of Financial Services.

Section 553.71(5), F.S., provides that a local enforcement agency<sup>21</sup> is an agency with jurisdiction to make inspections of buildings and to enforce the codes that establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities. A local enforcement agency must make uniform permit labels available for purchase by a contractor for the installation or replacement of a new or existing alarm system for not more than \$40 per label per project per unit, and may not require the payment of any additional fees, charges, or expenses associated with the installation or replacement of an alarm system.<sup>22</sup>

A municipality, county, district, or other entity of local government may not adopt or maintain in effect any ordinance or rule regarding a low-voltage alarm system project that is inconsistent with s. 553.793, F.S.<sup>23</sup>

### III. Effect of Proposed Changes:

The bill revises s. 489.529, F.S., to require, in most circumstances, two attempts to confirm alarm signals generated by residential or commercial intrusion and burglary alarms systems that

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<sup>20</sup> NFPA is the acronym for the National Fire Protection Association, which is an international nonprofit organization established in 1896. Its mission is to reduce the worldwide burden of fire and other hazards on the quality of life by providing and advocating consensus codes, standards, research, training and education. The NFPA develops, publishes, and disseminates more than 300 consensus codes and standards intended to minimize the possibility and effects of fire and other risks. See <http://www.nfpa.org/about-nfpa> (last visited Jan. 17, 2018).

<sup>21</sup> Section 553.71(5), F.S., of the Florida Building Codes Act defines local enforcement agency as an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.

<sup>22</sup> See s. 553.793(5), F.S.

<sup>23</sup> See s. 553.793(10), F.S.

have central monitoring, before law enforcement may be contacted for response to the premises generating the alarm.

The bill requires the first attempt to confirm an active alarm signal be made by the central monitoring station, via communication by telephone call, text message, or other electronic means, with a person associated with the premises generating the alarm signal. If the first attempt to confirm the alarm signal is unsuccessful, then the central monitoring station must attempt to confirm the alarm signal a second time via communication by telephone call, text message, or other electronic means, with the premises owner, an occupant, or an authorized designee.

Under current law, contact with law enforcement for a response to an alarm may not be made unless a “central monitoring verification call” is made to a telephone number associated with the premises,<sup>24</sup> and if that call is not answered, then other, undefined “call-verification methods” for the premises must be employed.

The authorization in current law for immediate contact with law enforcement for a response to an active alarm is retained, when the intrusion/burglary alarm generating the alarm:

- Has a properly operating visual or auditory sensor that allows monitoring personnel to verify the alarm signal; or
- Is installed on a premises that is used for the storage of firearms or ammunition by a person who holds a valid federal firearms license.<sup>25</sup>

The bill provides an effective date of July 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

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<sup>24</sup> Section 489.529, F.S. was revised effective October 1, 2017, to require the first verification call be made to a telephone number associated with the premises. *See* ch. 2017-52, s. 2, Laws of Fla.

<sup>25</sup> *Id.*

**B. Private Sector Impact:**

The bill provides additional methods for confirmation of an alarm signal generated at a residential or commercial premises with a centrally monitored intrusion/burglary alarm and could assist in reducing the number of alarm dispatch calls to law enforcement agencies.

**C. Government Sector Impact:**

Reductions in false alarms may reduce the costs of responses to intrusion/burglary alarms by local governments and law enforcement agencies.

Reduction of false alarm calls may alleviate the associated burden to law enforcement agencies that must respond to premises generating intrusion/burglary alarms. Authorizing the use of text messages and other electronic means as methods that may be used in addition to telephone calls to attempt to confirm an alarm signal with a person associated with the premises generating the alarm signal may reduce false alarms.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 489.529 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on January 10, 2018:**

- Expands the methods for verification of an alarm signal generated by residential or commercial intrusion/burglary alarms that have central monitoring, before law enforcement is contacted for response to the premises, to allow – in addition to a telephone call – verification by:
  - A text message; or
  - Other electronic means.
- Requires a second attempt to verify the alarm signal be made (if the first attempt is not successful) with the premises owner, occupant, or an authorized designee, by:
  - A telephone call;
  - A text message; or
  - Other electronic means.
- Deletes the bill's provisions that:
  - Alarm monitoring personnel make the first attempt at verifying the alarm signal;



- The first verification attempt be made to persons “at” the premises generating the alarm signal; and
- Refer to alarm “confirmation” to maintain consistency with references in current law to alarm “verification” and “verification protocol.”
- Revises the short title of the bill to “Alarm Verification” from “Alarm Confirmation.”

**B. Amendments:**

None.

By the Committee on Regulated Industries; and Senator Bean

580-02001-18

2018876c1

1 A bill to be entitled  
2 An act relating to alarm verification; amending s.  
3 489.529, F.S.; revising requirements for alarm  
4 verification to include additional methods by which an  
5 alarm monitoring company may verify a residential or  
6 commercial intrusion/burglary alarm signal and to  
7 require that two attempts be made to verify an alarm  
8 signal; providing an effective date.

9  
10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. Section 489.529, Florida Statutes, is amended to  
13 read:

14 489.529 Alarm verification ~~calls~~ required.—All residential  
15 or commercial intrusion/burglary alarms that have central  
16 monitoring must have the a central monitoring station attempt to  
17 verify an alarm signal via communication by telephone  
18 verification call, text message, or other electronic means with  
19 a person made to a telephone number associated with the premises  
20 generating the alarm signal, before alarm monitor personnel  
21 contact a law enforcement agency for alarm dispatch. The central  
22 monitoring station must attempt to verify employ call-  
23 verification methods for the premises generating the alarm  
24 signal a second time via communication by telephone call, text  
25 message, or other electronic means with the premises owner,  
26 occupant, or his or her authorized designee if the first attempt  
27 to verify the alarm signal call is not successful answered.

28 However, verification attempts are calling is not required if:

29 (1) The intrusion/burglary alarm has a properly operating

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 visual or auditory sensor that enables the alarm monitoring  
31 personnel to verify the alarm signal; or  
32 (2) The intrusion/burglary alarm is installed on a premises  
33 that is used for the storage of firearms or ammunition by a  
34 person who holds a valid federal firearms license as a  
35 manufacturer, importer, or dealer of firearms or ammunition,  
36 provided the customer notifies the alarm monitoring company that  
37 he or she holds such license and would like to bypass the two-  
38 attempt two-call verification protocol. Upon initiation of a new  
39 alarm monitoring service contract, the alarm monitoring company  
40 shall make reasonable efforts to inform a customer who holds a  
41 valid federal firearms license as a manufacturer, importer, or  
42 dealer of firearms or ammunition of his or her right to opt out  
43 of the two-attempt two-call verification protocol.

44 Section 2. This act shall take effect July 1, 2018.

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** January 24, 2018

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I respectfully request that **Senate Bill # 876**, relating to Alarm Verification , be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Aaron Bean".

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Senator Aaron Bean  
Florida Senate, District 4

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1598

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Passidomo

SUBJECT: Deployed Parent Custody and Visitation

DATE: February 8, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<b>Favorable</b>
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1598 creates the Uniform Deployed Parents Custody and Visitation Act. The act establishes a framework for resolving child custody and visitation issues when a parent is deployed in military or other forms of national service. In addition to providing definitions for the act, the bill:

- Requires parents to communicate about custody and visitation issues upon learning of an upcoming deployment.
- Addresses custody issues that arise when someone receives notice of deployment and during deployment by permitting an out-of-court agreement. If the parents do not reach an agreement, an expedited resolution of custody arrangement is available in court.
- Provides that no permanent custody order can be issued before or during deployment unless the servicemember consents.
- Governs termination of a temporary custody arrangement by written agreement between the parents or by court order.

The bill repeals s. 61.13002, F.S., pertaining to temporary time-sharing modification and child support modification due to military service. Repealing the current statute will prevent any conflicts between that section and the new act.

## II. Present Situation:

### Background

As military parents are deployed to serve around the world, complex child custody issues have arisen. These custody issues affect both the welfare of children and the ability of military members to serve their country. The Department of Defense has indicated that a significant number of deployed servicemembers are single parents and that related child custody and visitation issues have detrimentally impacted them and the overall war effort as these parents struggle to complete their missions.<sup>1</sup>

The sole federal statutory scheme that protects single-parent servicemembers is the Servicemembers Civil Relief Act (SCRA)<sup>2</sup> which generally governs the legal rights of a deployed servicemember. If military service materially affects a servicemember's ability to participate in his or her legal proceedings, a judge is required to grant a stay of the proceeding, even a custody proceeding. However, these mandatory stays only cover the first 90 day period after a member is deployed. When that time period ends, stays are discretionary with the court. The stays are then often overridden when the court tries to resolve custody issues for the children involved in the legal proceedings. The SCRA does not provide procedures for a temporary custody arrangement and does not provide courts with any guidance on how to balance the best interests of the child with the servicemembers' interests.<sup>3</sup>

Under the principle of federalism,<sup>4</sup> the authority to resolve child custody and visitation issues resides with the states. As a result, many states have adopted differing approaches to deal with custody issues during a deployment. Because military families are often moving from one state to another and because one parent might live in one state and the other parent might live in a different state after divorce, custody issues have become very complex.<sup>5</sup>

### Florida Law

Section 61.13002, F.S., addresses temporary time-sharing modifications and child support modifications due to military service. The statute allows for the filing of a petition or motion for modification of time-sharing and parental responsibility when a parent is activated, deployed, or temporarily assigned to military service and that parent's ability to comply with time-sharing is materially affected.<sup>6</sup> Generally, the court may not issue an order or modify a previous judgment or order that changes time-sharing as it existed on the date the parent was activated, deployed, or temporarily assigned.<sup>7</sup> However, the court may enter a temporary order to modify or amend

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<sup>1</sup> Uniform Law Commission, The National Conference of Commissioners on Uniform State Laws, *Deployed Parents Custody and Visitation Act Summary*, <http://uniformlaws.org/ActSummary.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act> (last visited Jan. 23, 2018).

<sup>2</sup> 50 U.S.C. 3901–4043.

<sup>3</sup> *Id.*

<sup>4</sup> Federalism is defined as the legal relationship and distribution of power between federal and state governments. BLACK'S LAW DICTIONARY (10<sup>th</sup> ed. 2014).

<sup>5</sup> *Supra*, note 1.

<sup>6</sup> Section 61.13002(1), F.S.

<sup>7</sup> *Id.*

time-sharing if there is clear and convincing evidence that the temporary modification is in the best interests of the child.<sup>8</sup>

If a temporary order is entered, the court may address support by either:

- Ordering temporary support from the servicemember to the other parent;
- Requiring the servicemember to enroll the child as a military dependent for benefits available to military dependents; or
- Suspending, abating, or reducing the child support obligation of the nonservicemember until the previous order in effect is reinstated.<sup>9</sup>

The law allows a deployed parent on orders in excess of 90 days to designate a person or persons to exercise time-sharing with the child on the parent's behalf.<sup>10</sup> This is limited to a family member, stepparent, or relative of the child by marriage.<sup>11</sup> The other parent may only object on the basis that the designee's time-sharing is not in the best interest of the child.<sup>12</sup> The law excludes permanent change of station moves by servicemembers.<sup>13</sup>

The law also requires the court to:

- Allow the servicemember to testify by telephone, video, webcam, affidavit, or other means if a motion is filed and the servicemember is unable to appear in person;<sup>14</sup> and
- Reinstate the time-sharing order previously in effect upon the servicemember's return.<sup>15</sup>

### III. Effect of Proposed Changes:

Section 61.13002, F.S., the current statute dealing with temporary time-sharing modification and child support modification due to military service, discussed in the Present Situation above, is repealed.

The bill creates the “Uniform Deployed Parents Custody and Visitation Act.” This is modeled after the Deployed Parents Custody and Visitation Act developed in 2012 by the Uniform Law Commission.<sup>16</sup> The model act has been adopted by 13 states: Arkansas, Colorado, Iowa, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.<sup>17</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Section 61.13002(6), F.S.

<sup>10</sup> Section 61.13002(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Section 61.13002(7), F.S.

<sup>14</sup> Section 61.13002(5), F.S.

<sup>15</sup> Section 61.13002(4), F.S.

<sup>16</sup> The Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, was established in 1892. The organization provides states with non-partisan legislation that is designed to promote uniform state laws in areas where uniformity is practical. <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC>

<sup>17</sup> Uniform Law Commission, The National Conference of Commissioners on Uniform State Laws, *Legislative Fact Sheet – Deployed Parents Custody and Visitation Act*, [http://uniformlaws.org/LegislativeFactSheet.aspx?title=Deployed Parents Custody and Visitation Act](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act).

In general terms, the act provide definitions, contains provisions that apply to custody matters of servicemembers, custody issues that arise in light of and during deployment, expedited resolution of a custody arrangement in court, and termination of temporary custody arrangement upon a return from deployment.

**Definitions (s. 61.703, F.S.)**

The bill defines familiar terms used in the act, such as "adult," "child," and "court." The bill also defines multiple terms that are unique to the act:

"Servicemember" means a member of a uniformed service.

"Uniformed service" means active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard, United States Merchant Marine, commissioned corps of the United States Public Health Service, commissioned corps of the National Oceanic and Atmospheric Administration, and the National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia.

"Deployment" means the movement or mobilization of a servicemember for more than 90 days but less than 18 months pursuant to uniformed service orders that

- Are designated as unaccompanied;
- Do not authorize dependent travel; or
- Otherwise do not permit the movement of family members to the location to which the servicemember is deployed.

"Custodial responsibility" is used as an umbrella term for all powers and duties relating to caretaking authority and decisionmaking authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.

"Caretaking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.

"Decisionmaking authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

"Close and substantial relationship" means a positive relationship of substantial duration and depth in which a significant bond exists between a child and a nonparent.

"Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized by the deploying parent and the other parent to be in a familiar relationship with a child.

"Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the child's residence.

"Nonparent" means an individual other than a deploying parent or other parent.

"Notice of deployment" means official notification to a servicemember, through orders or other written or electronic communication from higher authority, that the servicemember is subject to deployment on or about a specified date.

### **Remedies for Noncompliance (s. 61.705, F.S.)**

If a court finds that a party acts in bad faith or intentionally fails to comply with the act or a court order issued under the act, in addition to other remedies authorized by general law, the court may assess reasonable attorney fees and costs against the party and order other appropriate relief.

### **Jurisdiction (s. 61.707, F.S.)**

The bill allows any court with jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)<sup>18</sup> to issue an order regarding custodial responsibility. For purposes of the UCCJEA, the residence of the deploying parent does not change due to that deployment if:

- A court has issued a temporary order regarding custodial responsibility;
- A court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order by temporary agreement; or
- A court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment.

The bill does not prevent a court from exercising temporary emergency jurisdiction under the UCCJEA.

### **Notice Requirement for Deploying Parent (s. 61.709, F.S.)**

The bill requires a deploying parent to notify the other parent of a pending deployment no later than 7 days after receiving notice of the deployment, unless he or she is reasonably prevented from doing so, in which case the deploying parent must provide notice as soon as is reasonably possible. The bill also requires the deploying parent to notify the other parent of a plan fulfilling each parent's share of custodial responsibility during deployment as soon as reasonably possible after notice of deployment. The bill allows this notice to be provided to the issuing court if a court order prohibits disclosure of the address or contact information of the other parent. If the address of the other parent is available to the issuing court, the court shall forward the notice to the other parent, and keep confidential the address or contact information of the other parent. The bill does not require this notice if both parents are living in the same residence and have actual notice of the deployment or plan.

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<sup>18</sup> The UCCJEA is a uniform law adopted by all states, except Massachusetts, that limits the state with jurisdiction over child custody to one, which avoids competing custody orders. It also provides enforcement provisions for child custody orders and the ability to exercise emergency jurisdiction if needed.



**Duty to Notify of change of Address (s. 61.711, F.S.)**

The bill requires an individual granted custodial responsibility during deployment to notify the deploying parent, any other individual with custodial responsibility of a child, and the court of any change of mailing address or residence, unless a court order prohibits disclosure of the address.

**General Consideration in Custody Proceeding of Parent's Service (s. 61.713, F.S.)**

A court is prohibited from considering a parent's past deployment or possible future deployment when determining the best interest of the child in a custodial responsibility proceeding.

**Form of Custodial Responsibility Agreement (s. 61.721, F.S.)**

Parents may enter into a temporary custodial responsibility agreement during deployment. The written agreement must be signed by both parents and any nonparent who is granted custodial responsibility. If feasible, the agreement must:

- Identify the destination, duration, and conditions of deployment;
- Specify the allocation of caretaking authority, any decisionmaking authority that accompanies that caretaking authority among the parties to the agreement and any grant of limited contact to a nonparent;
- Provide a process to resolve any dispute that may arise;
- Specify the frequency, duration, and means, including electronic, by which the deploying parent will have contact with the child, any role to be played by the other parent or nonparent in facilitating that contact, and allocate any costs of that contact;
- Acknowledge the agreement does not modify any existing child support obligation and that changing the terms of the obligation during deployment requires modification in the appropriate court;
- Provide that the agreement will terminate according to the act after the deploying parent returns from deployment; and
- Specify which parent is required to file the agreement, if the agreement must be filed with a court that has entered an order relating to custody or child support of the child.

**Nature of Authority Created by Custodial Responsibility Agreement (s. 61.723, F.S.)**

An agreement granting custodial responsibility during deployment is temporary and terminates after the deploying parent returns, unless the agreement has been terminated before that time by court order or modification. The custodial responsibility agreement does not create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact. A nonparent has standing to enforce the agreement until it is terminated in writing by agreement of the deploying parent and the other parent or, if there is no written agreement to terminate the agreement, by court order.

**Modification of Agreement (s. 61.725, F.S.)**

The bill allows the parents of a child to modify an agreement granting custodial responsibility by mutual consent. If an agreement is modified before deployment of a deploying parent, the

modification must be in writing and signed by both parents and any nonparent granted custodial responsibility under the modified agreement. If the agreement is modified during deployment of a deploying parent, the modification must be agreed to in some record by both parents and any nonparent granted custodial responsibility.

**Power of Attorney (s. 61.727, F.S.)**

A deploying parent, by power of attorney, may grant all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power of attorney.

**Filing Custodial Responsibility Agreement or Power of Attorney with Court (s. 61.729, F.S.)**

The bill requires any agreement or power of attorney be filed within reasonable time with a court that has entered an order in effect relating to custody or child support. The case number and heading of the pending case must be provided to the court with the agreement or power of attorney.

**Proceeding for Temporary Custody Order, Testimony (ss. 61.733 and 61.735, F.S.)**

A court may issue a temporary order granting custodial responsibility after a deploying parent receives notice of deployment, unless prohibited by the SCRA. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

Either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction, if a pending proceeding does not exist in a court with jurisdiction, the motion must be filed as a new action. If a motion to grant custodial responsibility is filed before a deploying parent deploys, the court must conduct an expedited hearing. The bill allows for testimony of the deploying parent, servicemember, or witness by electronic means unless the court finds good cause to require in-person testimony.

**Effect of Prior Judicial Order or Agreement (s. 61.737, F.S.)**

A prior judicial order granting custodial responsibility is binding on the court unless circumstances meet the requirements authorized by general law to modify a judicial order regarding custodial responsibility. The court must enforce a prior written agreement between the parties, unless the court finds that the agreement is not in the best interest of the child.

**Grant of Caretaking Authority to Nonparent (s. 61.739, F.S.)**

A court may, upon the request of a deploying parent, if it is in the best interests of the child, grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. Unless agreed to by the other parent, the grant of caretaking authority may not exceed the amount of time granted to the

deploying parent under a permanent custody order, or in the absence of a permanent custody order, the amount of time the deploying parent habitually cared for the child before being notified of deployment.

If the deploying parent is unable to exercise decisionmaking authority, a court may grant part of that authority to a nonparent, but must specify the decisionmaking powers granted.

#### **Grant of Limited Contact (s. 61.741, F.S.)**

A court must grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship on motion of a deploying parent unless the court finds that limited contact with a nonparent would not be in the best interest of the child.

#### **Nature of Authority Created by Temporary Custody Order (s. 61.743, F.S.)**

Any grant of authority to a nonparent is temporary and terminates after the deploying parent returns from deployment unless the grant has been terminated before then by a written agreement of the deploying parent and the other parent or, if there is no written agreement, by a court order. A nonparent granted caretaking authority, decisionmaking authority, or limited contact has standing to enforce the grant until it is terminated in writing by agreement of the deploying parent and the other parent, or if there is no written agreement, by court order or under the act. If the grant of authority is terminated by written agreement, a copy of the termination agreement must be filed with the court and the temporary custody order must be modified to reflect the termination. The deploying parent and the other parent may agree on alternative arrangements for custodial responsibility or seek an alternative arrangement that is consistent with the terms of the act.

#### **Content of Temporary Custody Order (s. 61.745, F.S.)**

An order granting custodial responsibility, when applicable, must:

- Designate the order as temporary and provide for termination after the deploying parent returns from deployment;
- Identify the destination, duration, and conditions of the deployment;
- Specify the allocation of caretaking authority, decisionmaking authority, or limited contact among the deploying parent, the other parent, and any nonparent.
- Provide a process to resolve any dispute that may arise;
- Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless it is not in the best interest of the child, and allocate any costs of communication;
- Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless it is not in the best interest of the child; and
- Provide for reasonable contact between the deploying parent and the child after the parent's return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order.

**Order for Child Support (s. 61.747, F.S.)**

The court may enter a temporary order for child support authorized by general law if the court has jurisdiction and has issued an order granting caretaking authority or an agreement granting caretaking authority has been issued.

**Modifying or Terminating a Grant of Custodial Responsibility or Limited Contact to Nonparent (s. 61.749, F.S.)**

The bill allows a court to modify or terminate a temporary grant of custodial responsibility on the motion of a deploying parent, other parent, or any nonparent granted caretaking authority if the modification or termination is in the best interest of the child. A modification is temporary and terminates after the deploying parent returns from deployment unless the grant has been terminated before then by court order. The court must terminate a grant of limited contact on motion of a deploying parent.

**Procedure for Terminating a Temporary Agreement Granting Custodial Responsibility (s. 61.761, F.S.)**

The bill details the procedure for terminating a temporary agreement granting custodial responsibility. The procedure provides that, after a deploying parent returns from deployment, a deploying parent and the other parent may file an agreement to terminate a temporary order for custodial responsibility. After an agreement to terminate has been filed, it must terminate on the date specified on the agreement or on the date the agreement is signed by the deploying parent and the other parent if the agreement to terminate does not specify a date.

In the absence of an agreement to terminate, a temporary agreement granting custodial responsibility terminates 30 days after the deploying parent gives notice of return from deployment to the other parent. If a temporary agreement granting custodial responsibility was filed with a court, an agreement to terminate must be filed with the court within a reasonable time after the deploying parent and other parent sign the agreement. A proceeding to prevent termination of a temporary order for custodial responsibility is governed by general law.

**Visitation Before Termination of Temporary Grant of Custodial Responsibility (s. 61.763, F.S.)**

The bill requires a court to issue a temporary order granting the deploying parent reasonable contact with the child from the time he or she returns from deployment until a temporary agreement or order is terminated, even if contact exceeds the time the deploying parent spent with the child before deployment unless it is not in the best interest of the child.

**Applicability (61.773, F.S.)**

The act does not affect the validity of temporary court orders entered before July 1, 2018.

The effective date of the bill is July 1, 2018.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

In 2002, the U.S. Supreme Court rendered a decision<sup>19</sup> in a case that pitted the rights of a mother against the visitation rights of the children's grandparents. The Court emphasized its history of recognizing "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." The Court further stated that the Due Process Clause prohibits a state from infringing on the fundamental right of a parent to make child rearing decisions. This legislation permits a deployed parent to delegate or assign his or her custodial rights to a non-parent. It could be argued that this assignment does not diminish the rights of the non-deployed parent because it is an assignment, not an expansion, of the deployed parent's existing rights.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>19</sup> *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 61.703, 61.773, 61.705, 61.707, 61.709, 61.711, 61.713, 61.723, 61.725, 61.727, 61.729, 61.733, 61.735, 61.737, 61.739, 61.741, 61.743, 61.745, 61.747, 61.749, 61.761, 61.763, and 61.771.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Rules on February 7, 2018:**

The changes to the underlying bill which are contained in the committee substitute primarily address the termination of a grant of caretaking authority to a nonparent. Even though a nonparent has standing to enforce temporary child-custody-type rights until the agreement is terminated, the committee substitute permits the parents, by written agreement, to terminate the grant at any time, even earlier than the return of the deploying parent. This also permits the deploying parent to resume caretaking responsibilities sooner rather than waiting for a court order upon his or her return. The written termination agreement must be filed with the court.

If a temporary grant of authority does not specify a termination date, the grant will expire 30 days after a parent gives notice of a return, as opposed to 60 days under the bill.

The committee substitute also includes clarifying changes to the definitions of a “close and substantial relationship,” and “family member” and creates a definition of “notice of deployment.”

**CS by Judiciary on January 25, 2018:**

The committee substitute repeals s. 61.13002, F.S., the current statute pertaining to temporary time-sharing modification and child support modification due to military service. This section is discussed above in the Present Situation under Florida Law. Repealing this provision will avoid any conflict between the new act and existing law.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2018	.	
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The Committee on Rules (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 61.13002, Florida Statutes, is repealed.

Section 2. Part IV of chapter 61, Florida Statutes,  
consisting of sections 61.703-61.773, Florida Statutes, is  
created and entitled "Uniform Deployed Parents Custody and  
Visitation Act."

61.703 Definitions.—As used in this part:

(1) "Adult" means an individual who has attained 18 years



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12 of age or who has had the disability of nonage removed under  
13 chapter 743.

14 (2) "Caretaking authority" means the right to live with and  
15 care for a child on a day-to-day basis. The term includes  
16 physical custody, parenting time, right to access, and  
17 visitation.

18 (3) "Child" means:

19 (a) An individual who has not attained 18 years of age and  
20 who has not had the disability of nonage removed under chapter  
21 743; or

22 (b) An adult son or daughter by birth or adoption, or  
23 designated by general law, who is the subject of a court order  
24 concerning custodial responsibility.

25 (4) "Close and substantial relationship" means a positive  
26 relationship of substantial duration and depth in which a  
27 significant bond exists between a child and a nonparent.

28 (5) "Court" means the court of legal jurisdiction.

29 (6) "Custodial responsibility" includes all powers and  
30 duties relating to caretaking authority and decisionmaking  
31 authority for a child. The term includes physical custody, legal  
32 custody, parenting time, right to access, visitation, and  
33 authority to grant limited contact with a child.

34 (7) "Decisionmaking authority" means the power to make  
35 important decisions regarding a child, including decisions  
36 regarding the child's education, religious training, health  
37 care, extracurricular activities, and travel. The term does not  
38 include the power to make decisions that necessarily accompany a  
39 grant of caretaking authority.

40 (8) "Deploying parent" means a servicemember who is





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41 deployed or has been notified of impending deployment and is:

42 (a) A parent of a child; or

43 (b) An individual who has custodial responsibility for a  
44 child.

45 (9) "Deployment" means the movement or mobilization of a  
46 servicemember for more than 90 days but less than 18 months  
47 pursuant to uniformed service orders that:

48 (a) Are designated as unaccompanied;

49 (b) Do not authorize dependent travel; or

50 (c) Otherwise do not permit the movement of family members  
51 to the location to which the servicemember is deployed.

52 (10) "Family member" means a sibling, aunt, uncle, cousin,  
53 stepparent, or grandparent of a child or an individual  
54 recognized by the deploying parent and the other parent to be in  
55 a familial relationship with a child.

56 (11) "Limited contact" means the authority of a nonparent  
57 to visit a child for a limited time. The term includes authority  
58 to take the child to a place other than the child's residence.

59 (12) "Nonparent" means an individual other than a deploying  
60 parent or other parent.

61 (13) "Notice of deployment" means official notification to  
62 a servicemember, through orders or other written or electronic  
63 communication from higher authority, that the servicemember is  
64 subject to deployment on or about a specified date.

65 (14) "Other parent" means an individual who, in addition to  
66 a deploying parent, is:

67 (a) A parent of a child; or

68 (b) An individual who has custodial responsibility for a  
69 child.



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70           (15) "Record" means information that is created in a  
71 tangible medium or stored in an electronic or other medium and  
72 is retrievable in perceivable form.

73           (16) "Return from deployment" means the conclusion of a  
74 servicemember's deployment as specified in uniformed service  
75 orders.

76           (17) "Servicemember" means a member of a uniformed service.

77           (18) "Sign" means, with the intent to authenticate or adopt  
78 a record, to:

79           (a) Execute or adopt a tangible symbol; or

80           (b) Attach to or logically associate with the record an  
81 electronic symbol, sound, or process.

82           (19) "State" means a state of the United States, the  
83 District of Columbia, Puerto Rico, the United States Virgin  
84 Islands, or any territory or insular possession subject to the  
85 jurisdiction of the United States.

86           (20) "Uniformed service" means any of the following:

87           (a) Active and reserve components of the Army, Navy, Air  
88 Force, Marine Corps, or Coast Guard of the United States.

89           (b) The United States Merchant Marine.

90           (c) The commissioned corps of the United States Public  
91 Health Service.

92           (d) The commissioned corps of the National Oceanic and  
93 Atmospheric Administration.

94           (e) The National Guard of a state or territory of the  
95 United States, Puerto Rico, or the District of Columbia.

96           61.705 Remedies for noncompliance.—In addition to other  
97 remedies authorized by general law, if a court finds that a  
98 party to a proceeding acts in bad faith or intentionally fails



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99 to comply with this part or a court order issued under this  
100 part, the court may assess reasonable attorney fees and costs  
101 against the party, and order other appropriate relief.

102 61.707 Jurisdiction.—

103 (1) A court may issue an order regarding custodial  
104 responsibility only if the court has jurisdiction under the  
105 Uniform Child Custody Jurisdiction and Enforcement Act.

106 (2) For purposes of the Uniform Child Custody Jurisdiction  
107 and Enforcement Act, the residence of the deploying parent does  
108 not change by reason of the deployment if:

109 (a) A court has issued a temporary order regarding  
110 custodial responsibility.

111 (b) A court has issued a permanent order regarding  
112 custodial responsibility before notice of deployment and the  
113 parents modify that order temporarily by agreement.

114 (c) A court in another state has issued a temporary order  
115 regarding custodial responsibility as a result of impending or  
116 current deployment.

117 (3) This section does not prevent a court from exercising  
118 temporary emergency jurisdiction under the Uniform Child Custody  
119 Jurisdiction and Enforcement Act.

120 61.709 Notice requirement for deploying parent.—

121 (1) Except as otherwise provided in subsection (3), and  
122 subject to subsection (2), a deploying parent shall notify in a  
123 record to the other parent:

124 (a) A pending deployment not later than 7 days after  
125 receiving notice of deployment unless he or she is reasonably  
126 prevented from doing so by the circumstances of service, in  
127 which case the deploying parent shall provide notice as soon as



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128 reasonably possible.

129 (b) A plan fulfilling each parent's share of custodial  
130 responsibility during deployment provided as soon as reasonably  
131 possible after notice of deployment is given under paragraph  
132 (a).

133 (2) If a court order prohibits disclosure of the address or  
134 contact information of the other parent, notice pursuant to  
135 subsection (1) must be provided to the issuing court. If the  
136 address of the other parent is available to the issuing court,  
137 the court shall forward the notice to the other parent. The  
138 court shall keep confidential the address or contact information  
139 of the other parent.

140 (3) Notice pursuant to subsection (1) is not required if  
141 both parents are living in the same residence and have actual  
142 notice of the deployment or plan.

143 (4) In a proceeding regarding custodial responsibility, a  
144 court may consider the reasonableness of a parent's efforts to  
145 comply with this section.

146 61.711 Duty to notify of change of address.-

147 (1) Except as otherwise provided in subsection (2), an  
148 individual granted custodial responsibility during deployment  
149 must notify the deploying parent and any other individual with  
150 custodial responsibility of a child of any change of mailing  
151 address or residence until the grant is terminated. The  
152 individual must provide the notice to any court that has issued  
153 a custody or child support order concerning the child.

154 (2) If a court order prohibits disclosure of the address or  
155 contact information of an individual to whom custodial  
156 responsibility has been granted, notice pursuant to subsection



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157 (1) must be provided to the issuing court. The court shall keep  
158 confidential the mailing address or residence of the individual  
159 granted custodial responsibility.

160 61.713 General consideration in custody proceeding of  
161 parent's service.—In a proceeding for custodial responsibility  
162 of a child of a servicemember, a court may not consider a  
163 parent's past deployment or possible future deployment in  
164 determining the best interest of the child.

165 61.721 Form of custodial responsibility agreement.—

166 (1) The parents of a child may enter into a temporary  
167 agreement granting custodial responsibility during deployment.

168 (2) The agreement must be in writing and signed by both  
169 parents and any nonparent granted custodial responsibility.

170 (3) Subject to subsection (4), the agreement, if feasible,  
171 must:

172 (a) Identify the destination, duration, and conditions of  
173 the deployment that is the basis for the agreement.

174 (b) Specify the allocation of caretaking authority among  
175 the deploying parent, the other parent, and any nonparent.

176 (c) Specify any decisionmaking authority that accompanies a  
177 grant of caretaking authority.

178 (d) Specify any grant of limited contact to a nonparent.

179 (e) Provide a process to resolve any dispute that may arise  
180 if custodial responsibility is shared by the other parent and a  
181 nonparent, or by other nonparents.

182 (f) Specify the frequency, duration, and means, including  
183 electronic means, by which the deploying parent will have  
184 contact with the child, any role to be played by the other  
185 parent or nonparent in facilitating the contact, and the



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186 allocation of any costs of contact.

187 (g) Specify contact between the deploying parent and child  
188 during the time the deploying parent is on leave or is otherwise  
189 available.

190 (h) Acknowledge that the agreement does not modify any  
191 existing child support obligation and that changing the terms of  
192 the obligation during deployment requires modification in the  
193 appropriate court.

194 (i) Provide that the agreement will terminate according to  
195 the procedures under this part after the deploying parent  
196 returns from deployment.

197 (j) Specify which parent is required to file the agreement  
198 if the agreement must be filed pursuant to s. 61.729.

199 (4) The omission of any item in subsection (3) does not  
200 invalidate the agreement.

201 61.723 Nature of authority created by custodial  
202 responsibility agreement.—

203 (1) An agreement granting custodial responsibility during  
204 deployment is temporary and terminates after the deploying  
205 parent returns from deployment unless the agreement has been  
206 terminated before that time by court order or modification under  
207 s. 61.725. The agreement does not create an independent,  
208 continuing right to caretaking authority, decisionmaking  
209 authority, or limited contact for an individual granted  
210 custodial responsibility.

211 (2) A nonparent granted caretaking authority,  
212 decisionmaking authority, or limited contact by agreement has  
213 standing to enforce the agreement until it is terminated in  
214 writing by agreement of the deploying parent and the other



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215 parent, or in the absence of such agreement, by court order,  
216 under s. 61.761, or modified under s. 61.725.

217 61.725 Modification of agreement.—

218 (1) The parents of a child may modify an agreement granting  
219 custodial responsibility by mutual consent.

220 (2) If an agreement is modified before deployment of a  
221 deploying parent, the modification must be in writing and signed  
222 by both parents and any nonparent granted custodial  
223 responsibility under the modified agreement.

224 (3) If an agreement is modified during deployment of a  
225 deploying parent, the modification must be agreed to in a record  
226 by both parents and any nonparent granted custodial  
227 responsibility.

228 61.727 Power of attorney.—A deploying parent may, by power  
229 of attorney, grant all or part of custodial responsibility to an  
230 adult nonparent for the period of deployment if no other parent  
231 possesses custodial responsibility, or if a court order  
232 currently in effect prohibits contact between the child and the  
233 other parent. The deploying parent may revoke the power of  
234 attorney by signing a revocation of the power of attorney.

235 61.729 Filing custodial responsibility agreement or power  
236 of attorney with court.—An agreement or power of attorney must  
237 be filed within a reasonable time with a court that has entered  
238 an order in effect relating to custodial responsibility or child  
239 support concerning the child who is the subject of the agreement  
240 or power. The case number and heading of the pending case  
241 concerning custodial responsibility or child support must be  
242 provided to the court with the agreement or power.

243 61.733 Proceeding for temporary custody order.—



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244 (1) After a deploying parent receives notice of deployment  
245 and until the deployment terminates, a court may issue a  
246 temporary order granting custodial responsibility unless  
247 prohibited by the Servicemembers Civil Relief Act, Title 50,  
248 Appendix U.S.C. ss. 501 et seq. A court may not issue a  
249 permanent order granting custodial responsibility without the  
250 consent of the deploying parent.

251 (2) (a) At any time after a deploying parent receives notice  
252 of deployment, either parent may file a motion regarding  
253 custodial responsibility of a child during deployment. The  
254 motion must be filed in a pending proceeding for custodial  
255 responsibility in a court with jurisdiction under s. 61.707 or,  
256 if a pending proceeding does not exist in a court with  
257 jurisdiction under s. 61.707, the motion must be filed in a new  
258 action for granting custodial responsibility during deployment.

259 (b) If a motion to grant custodial responsibility is filed  
260 under paragraph (a) before a deploying parent deploys, the court  
261 shall conduct an expedited hearing.

262 61.735 Testimony by electronic means.—In a proceeding for a  
263 temporary custody order, a deploying parent, servicemember, or  
264 witness who is not reasonably able to appear in person may  
265 appear, provide testimony, and present evidence by electronic  
266 means unless the court finds good cause to require in-person  
267 testimony.

268 61.737 Effect of prior judicial order or agreement.—In a  
269 proceeding for a temporary grant of custodial responsibility:

270 (1) A prior judicial order granting custodial  
271 responsibility in the event of deployment is binding on the  
272 court unless circumstances meet the requirements authorized by





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273 general law for modifying a judicial order regarding custodial  
274 responsibility.

275 (2) The court shall enforce a prior written agreement  
276 between the parents for granting custodial responsibility in the  
277 event of deployment, including an agreement for custodial  
278 responsibility during deployment, unless the court finds that  
279 the agreement is not in the best interest of the child.

280 61.739 Grant of caretaking authority to nonparent.—

281 (1) Upon the motion of a deploying parent and in accordance  
282 with general law, if it is in the best interest of the child, a  
283 court may grant caretaking authority to a nonparent who is an  
284 adult family member of the child or an adult with whom the child  
285 has a close and substantial relationship.

286 (2) Unless a grant of caretaking authority to a nonparent  
287 is agreed to by the other parent, the grant is limited to an  
288 amount of time that may not exceed:

289 (a) The amount of time granted to the deploying parent  
290 under a permanent custody order; however, the court may add  
291 travel time necessary to transport the child; or

292 (b) In the absence of a permanent custody order that is  
293 currently in effect, the amount of time the deploying parent  
294 habitually cared for the child before being notified of  
295 deployment; however, the court may add travel time necessary to  
296 transport the child.

297 (3) If the deploying parent is unable to exercise  
298 decisionmaking authority, a court may grant part of that  
299 authority to a nonparent who is an adult family member of the  
300 child or an adult with whom the child has a close and  
301 substantial relationship. If a court grants the authority to a



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302 nonparent, the court shall specify the decisionmaking powers  
303 granted.

304 61.741 Grant of limited contact.—A court shall grant  
305 limited contact to a nonparent who is a family member of the  
306 child or an individual with whom the child has a close and  
307 substantial relationship on motion of a deploying parent and in  
308 accordance with general law unless the court finds that limited  
309 contact with a nonparent would not be in the best interest of  
310 the child.

311 61.743 Nature of authority created by temporary custody  
312 order.—

313 (1) A grant of authority is temporary and terminates after  
314 the deploying parent returns from deployment unless the grant  
315 has been terminated before that time by written agreement of the  
316 deploying parent and the other parent, or in the absence of such  
317 an agreement, by court order. The grant does not create an  
318 independent, continuing right to caretaking authority,  
319 decisionmaking authority, or limited contact to an individual  
320 granted temporary custody.

321 (2) A nonparent granted caretaking authority,  
322 decisionmaking authority, or limited contact has standing to  
323 enforce the grant until it is terminated in writing by agreement  
324 of the deploying parent and the other parent, or in the absence  
325 of such an agreement, by court order or under this part.

326 (3) If a grant of authority is terminated in writing by  
327 agreement of the deploying parent and the other parent, a copy  
328 of the termination agreement shall be filed with the court and  
329 the temporary custody order shall be modified to reflect the  
330 termination. Thereafter the deploying parent and the other



331 parent may agree on alternative arrangements for custodial  
332 responsibility in compliance with s. 61.721 or either parent may  
333 seek an alternative arrangement for custodial responsibility  
334 under s. 61.749.

335 61.745 Content of temporary custody order.—An order  
336 granting custodial responsibility, when applicable, must:

337 (1) Designate the order as temporary and provide for  
338 termination after the deploying parent returns from deployment.

339 (2) Identify, to the extent feasible, the destination,  
340 duration, and conditions of the deployment.

341 (3) Specify the allocation of caretaking authority,  
342 decisionmaking authority, or limited contact among the deploying  
343 parent, the other parent, and any nonparent.

344 (4) Provide a process to resolve any dispute that may arise  
345 if the order divides caretaking or decisionmaking authority  
346 between individuals, or grants caretaking authority to one  
347 individual and limited contact to another individual.

348 (5) Provide for liberal communication between the deploying  
349 parent and the child during deployment, including through  
350 electronic means, unless it is not in the best interest of the  
351 child, and allocate any costs of communication.

352 (6) Provide for liberal contact between the deploying  
353 parent and the child during the time the deploying parent is on  
354 leave or otherwise available, unless it is not in the best  
355 interest of the child.

356 (7) Provide for reasonable contact between the deploying  
357 parent and the child after the parent's return from deployment  
358 until the temporary order is terminated, even if the time of  
359 contact exceeds the time the deploying parent spent with the



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360 child before entry of the temporary order.

361 61.747 Order for child support.—If a court has issued an  
362 order granting caretaking authority, or an agreement granting  
363 caretaking authority has been executed, the court may enter a  
364 temporary order for child support authorized by general law if  
365 the court has jurisdiction under the Uniform Interstate Family  
366 Support Act.

367 61.749 Modifying or terminating grant of custodial  
368 responsibility or limited contact to nonparent.—

369 (1) Except for an agreement under s. 61.723, or as  
370 otherwise provided in subsection (2), and consistent with the  
371 Servicemembers Civil Relief Act, Title 50, Appendix U.S.C. ss.  
372 501 et seq., a court may modify or terminate a temporary grant  
373 of custodial responsibility on motion of a deploying parent,  
374 other parent, or any nonparent granted caretaking authority if  
375 the modification or termination is consistent with this part and  
376 is in the best interest of the child. A modification is  
377 temporary and terminates after the deploying parent returns from  
378 deployment, unless the grant has been terminated before that  
379 time by court order.

380 (2) The court shall terminate a grant of limited contact on  
381 motion of a deploying parent.

382 61.761 Procedure for terminating temporary agreement  
383 granting custodial responsibility.—

384 (1) After a deploying parent returns from deployment, a  
385 deploying parent and the other parent may file with the court an  
386 agreement to terminate a temporary order for custodial  
387 responsibility.

388 (2) After an agreement has been filed, it shall terminate:



389 (a) On the date specified on an agreement to terminate  
390 under subsection (1); or

391 (b) On the date the agreement is signed by the deploying  
392 parent and the other parent if the agreement to terminate does  
393 not specify a date.

394 (3) In the absence of an agreement to terminate under (1),  
395 a temporary agreement granting custodial responsibility  
396 terminates 30 days after the deploying parent gives notice of  
397 return from deployment to the other parent.

398 (4) If a temporary agreement granting custodial  
399 responsibility was filed with a court pursuant to s. 61.729, an  
400 agreement to terminate must be filed with the court within a  
401 reasonable time after the deploying parent and other parent sign  
402 the agreement. The case number and heading of the case  
403 concerning custodial responsibility or child support must be  
404 provided to the court with the agreement to terminate.

405 (5) A proceeding seeking to prevent termination of a  
406 temporary order for custodial responsibility is governed by  
407 general law.

408 61.763 Visitation before termination of temporary grant of  
409 custodial responsibility.—From the time a deploying parent  
410 returns from deployment until a temporary agreement or order for  
411 custodial responsibility is terminated, the court shall issue a  
412 temporary order granting the deploying parent reasonable contact  
413 with the child even if the time of contact exceeds the time the  
414 deploying parent spent with the child before deployment unless  
415 it is not in the best interest of the child.

416 61.771 Relation to electronic signatures in Global and  
417 National Commerce Act.—This act modifies, limits, or supersedes



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418 the Electronic Signatures in Global and National Commerce Act,  
419 15 U.S.C. s. 7001 et seq., but does not modify, limit, or  
420 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or  
421 authorize electronic delivery of any of the notices described in  
422 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

423 61.773 Applicability.—This act does not affect the validity  
424 of a temporary court order concerning custodial responsibility  
425 during deployment entered before July 1, 2018.

426 Section 3. This act shall take effect July 1, 2018.

427  
428 ===== T I T L E A M E N D M E N T =====

429 And the title is amended as follows:

430 Delete everything before the enacting clause  
431 and insert:

432 A bill to be entitled  
433 An act relating to deployed parent custody and  
434 visitation; repealing s. 61.13002, F.S., relating to  
435 temporary time-sharing modification and child support  
436 modification due to military service; creating part IV  
437 of ch. 61, F.S., entitled "Uniform Deployed Parents  
438 Custody and Visitation Act"; providing definitions;  
439 providing remedies for noncompliance; authorizing a  
440 court to issue certain custodial orders only under  
441 certain jurisdiction; providing notice requirements;  
442 providing requirements for proceeding for custodial  
443 responsibility of a child of a servicemember;  
444 providing requirements for agreement forms,  
445 termination, modification, power of attorney, and  
446 filing; providing requirements for temporary orders of



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447        custodial responsibility; authorizing electronic  
448        testimony in a proceeding for temporary custody;  
449        providing for the effect of any prior judicial order  
450        or agreement; authorizing a court to grant caretaking  
451        authority or limited contact to a nonparent under  
452        certain conditions; providing for the termination of a  
453        grant of authority; providing requirements for an  
454        order of temporary custody; authorizing a court to  
455        enter a temporary order for child support under  
456        certain circumstances; authorizing a court to modify  
457        or terminate a temporary grant of custodial  
458        responsibility; providing procedures for termination  
459        of a temporary custodial responsibility agreement;  
460        providing for visitation; providing construction;  
461        providing applicability; providing an effective date.

By the Committee on Judiciary; and Senator Passidomo

590-02437-18

20181598c1

1 A bill to be entitled  
 2 An act relating to deployed parent custody and  
 3 visitation; repealing s. 61.13002, F.S., relating to  
 4 temporary time-sharing modification and child support  
 5 modification due to military service; creating part IV  
 6 of ch. 61, F.S., entitled "Uniform Deployed Parents  
 7 Custody and Visitation Act"; providing definitions;  
 8 providing remedies for noncompliance; authorizing a  
 9 court to issue certain custodial orders only under  
 10 certain jurisdiction; providing notice requirements;  
 11 providing requirements for proceeding for custodial  
 12 responsibility of a child of a servicemember;  
 13 providing requirements for agreement forms,  
 14 termination, modification, power of attorney, and  
 15 filing; providing requirements for temporary orders of  
 16 custodial responsibility; authorizing electronic  
 17 testimony in a proceeding for temporary custody;  
 18 providing for the effect of any prior judicial order  
 19 or agreement; authorizing a court to grant caretaking  
 20 authority or limited contact to a nonparent under  
 21 certain conditions; providing for the termination of a  
 22 grant of authority; providing requirements for an  
 23 order of temporary custody; authorizing a court to  
 24 enter a temporary order for child support under  
 25 certain circumstances; authorizing a court to modify  
 26 or terminate a temporary grant of custodial  
 27 responsibility; providing procedures for termination  
 28 of a temporary custodial responsibility agreement;  
 29 providing for visitation; providing construction;

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 providing applicability; providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Section 61.13002, Florida Statutes, is repealed.  
 35 Section 2. Part IV of chapter 61, Florida Statutes,  
 36 consisting of sections 61.703-61.773, Florida Statutes, is  
 37 created and entitled "Uniform Deployed Parents Custody and  
 38 Visitation Act."  
 39 61.703 Definitions.—As used in this part:  
 40 (1) "Adult" means an individual who has attained 18 years  
 41 of age or who has had the disability of nonage removed under  
 42 chapter 743.  
 43 (2) "Caretaking authority" means the right to live with and  
 44 care for a child on a day-to-day basis. The term includes  
 45 physical custody, parenting time, right to access, and  
 46 visitation.  
 47 (3) "Child" means:  
 48 (a) An individual who has not attained 18 years of age and  
 49 who has not had the disability of nonage removed under chapter  
 50 743; or  
 51 (b) An adult son or daughter by birth or adoption, or  
 52 designated by general law, who is the subject of a court order  
 53 concerning custodial responsibility.  
 54 (4) "Close and substantial relationship" means a  
 55 relationship in which a significant bond exists between a child  
 56 and a nonparent.  
 57 (5) "Court" means the court of legal jurisdiction.  
 58 (6) "Custodial responsibility" includes all powers and

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59 duties relating to caretaking authority and decisionmaking  
 60 authority for a child. The term includes physical custody, legal  
 61 custody, parenting time, right to access, visitation, and  
 62 authority to grant limited contact with a child.

63 (7) "Decisionmaking authority" means the power to make  
 64 important decisions regarding a child, including decisions  
 65 regarding the child's education, religious training, health  
 66 care, extracurricular activities, and travel. The term does not  
 67 include the power to make decisions that necessarily accompany a  
 68 grant of caretaking authority.

69 (8) "Deploying parent" means a servicemember who is  
 70 deployed or has been notified of impending deployment and is:

71 (a) A parent of a child; or

72 (b) An individual who has custodial responsibility for a  
 73 child.

74 (9) "Deployment" means the movement or mobilization of a  
 75 servicemember for more than 90 days but less than 18 months  
 76 pursuant to uniformed service orders that:

77 (a) Are designated as unaccompanied;

78 (b) Do not authorize dependent travel; or

79 (c) Otherwise do not permit the movement of family members  
 80 to the location to which the servicemember is deployed.

81 (10) "Family member" means a sibling, aunt, uncle, cousin,  
 82 stepparent, or grandparent of a child or an individual  
 83 recognized to be in a familial relationship with a child.

84 (11) "Limited contact" means the authority of a nonparent  
 85 to visit a child for a limited time. The term includes authority  
 86 to take the child to a place other than the child's residence.

87 (12) "Nonparent" means an individual other than a deploying

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88 parent or other parent.

89 (13) "Other parent" means an individual who, in addition to  
 90 a deploying parent, is:

91 (a) A parent of a child; or

92 (b) An individual who has custodial responsibility for a  
 93 child.

94 (14) "Record" means information that is created in a  
 95 tangible medium or stored in an electronic or other medium and  
 96 is retrievable in perceivable form.

97 (15) "Return from deployment" means the conclusion of a  
 98 servicemember's deployment as specified in uniformed service  
 99 orders.

100 (16) "Servicemember" means a member of a uniformed service.

101 (17) "Sign" means, with the intent to authenticate or adopt  
 102 a record, to:

103 (a) Execute or adopt a tangible symbol; or

104 (b) Attach to or logically associate with the record an  
 105 electronic symbol, sound, or process.

106 (18) "State" means a state of the United States, the  
 107 District of Columbia, Puerto Rico, the United States Virgin  
 108 Islands, or any territory or insular possession subject to the  
 109 jurisdiction of the United States.

110 (19) "Uniformed service" means any of the following:

111 (a) Active and reserve components of the Army, Navy, Air  
 112 Force, Marine Corps, or Coast Guard of the United States.

113 (b) The United States Merchant Marine.

114 (c) The commissioned corps of the United States Public  
 115 Health Service.

116 (d) The commissioned corps of the National Oceanic and

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117 Atmospheric Administration.

118 (e) The National Guard of a state or territory of the  
 119 United States, Puerto Rico, or the District of Columbia.

120 61.705 Remedies for noncompliance.—In addition to other  
 121 remedies authorized by general law, if a court finds that a  
 122 party to a proceeding acts in bad faith or intentionally fails  
 123 to comply with this part or a court order issued under this  
 124 part, the court may assess reasonable attorney fees and costs  
 125 against the party, and order other appropriate relief.

126 61.707 Jurisdiction.—

127 (1) A court may issue an order regarding custodial  
 128 responsibility only if the court has jurisdiction under the  
 129 Uniform Child Custody Jurisdiction and Enforcement Act.

130 (2) For purposes of the Uniform Child Custody Jurisdiction  
 131 and Enforcement Act, the residence of the deploying parent does  
 132 not change by reason of the deployment if:

133 (a) A court has issued a temporary order regarding  
 134 custodial responsibility.

135 (b) A court has issued a permanent order regarding  
 136 custodial responsibility before notice of deployment and the  
 137 parents modify that order temporarily by agreement.

138 (c) A court in another state has issued a temporary order  
 139 regarding custodial responsibility as a result of impending or  
 140 current deployment.

141 (3) This section does not prevent a court from exercising  
 142 temporary emergency jurisdiction under the Uniform Child Custody  
 143 Jurisdiction and Enforcement Act.

144 61.709 Notice requirement for deploying parent.—

145 (1) Except as otherwise provided in subsection (3), and

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146 subject to subsection (2), a deploying parent shall notify in a  
 147 record to the other parent:

148 (a) A pending deployment not later than 7 days after  
 149 receiving notice of deployment unless he or she is reasonably  
 150 prevented from doing so by the circumstances of service, in  
 151 which case the deploying parent shall provide notice as soon as  
 152 reasonably possible.

153 (b) A plan fulfilling each parent's share of custodial  
 154 responsibility during deployment provided as soon as reasonably  
 155 possible after notice of deployment is given under paragraph  
 156 (a).

157 (2) If a court order prohibits disclosure of the address or  
 158 contact information of the other parent, notice pursuant to  
 159 subsection (1) must be provided to the issuing court. If the  
 160 address of the other parent is available to the issuing court,  
 161 the court shall forward the notice to the other parent. The  
 162 court shall keep confidential the address or contact information  
 163 of the other parent.

164 (3) Notice pursuant to subsection (1) is not required if  
 165 both parents are living in the same residence and have actual  
 166 notice of the deployment or plan.

167 (4) In a proceeding regarding custodial responsibility, a  
 168 court may consider the reasonableness of a parent's efforts to  
 169 comply with this section.

170 61.711 Duty to notify of change of address.—

171 (1) Except as otherwise provided in subsection (2), an  
 172 individual granted custodial responsibility during deployment  
 173 must notify the deploying parent and any other individual with  
 174 custodial responsibility of a child of any change of mailing

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175 address or residence until the grant is terminated. The  
 176 individual must provide the notice to any court that has issued  
 177 a custody or child support order concerning the child.

178 (2) If a court order prohibits disclosure of the address or  
 179 contact information of an individual to whom custodial  
 180 responsibility has been granted, notice pursuant to subsection  
 181 (1) must be provided to the issuing court. The court shall keep  
 182 confidential the mailing address or residence of the individual  
 183 granted custodial responsibility.

184 61.713 General consideration in custody proceeding of  
 185 parent's service.-In a proceeding for custodial responsibility  
 186 of a child of a servicemember, a court may not consider a  
 187 parent's past deployment or possible future deployment in  
 188 determining the best interest of the child.

189 61.721 Form of custodial responsibility agreement.-

190 (1) The parents of a child may enter into a temporary  
 191 agreement granting custodial responsibility during deployment.

192 (2) The agreement must be in writing and signed by both  
 193 parents and any nonparent granted custodial responsibility.

194 (3) Subject to subsection (4), the agreement, if feasible,  
 195 must:

196 (a) Identify the destination, duration, and conditions of  
 197 the deployment that is the basis for the agreement.

198 (b) Specify the allocation of caretaking authority among  
 199 the deploying parent, the other parent, and any nonparent.

200 (c) Specify any decisionmaking authority that accompanies a  
 201 grant of caretaking authority.

202 (d) Specify any grant of limited contact to a nonparent.

203 (e) Provide a process to resolve any dispute that may arise

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204 if custodial responsibility is shared by the other parent and a  
 205 nonparent, or by other nonparents.

206 (f) Specify the frequency, duration, and means, including  
 207 electronic means, by which the deploying parent will have  
 208 contact with the child, any role to be played by the other  
 209 parent or nonparent in facilitating the contact, and the  
 210 allocation of any costs of contact.

211 (g) Specify contact between the deploying parent and child  
 212 during the time the deploying parent is on leave or is otherwise  
 213 available.

214 (h) Acknowledge that the agreement does not modify any  
 215 existing child support obligation and that changing the terms of  
 216 the obligation during deployment requires modification in the  
 217 appropriate court.

218 (i) Provide that the agreement will terminate according to  
 219 the procedures under this part after the deploying parent  
 220 returns from deployment.

221 (j) Specify which parent is required to file the agreement  
 222 if the agreement must be filed pursuant to s. 61.729.

223 (4) The omission of any item in subsection (3) does not  
 224 invalidate the agreement.

225 61.723 Nature of authority created by custodial  
 226 responsibility agreement.-

227 (1) An agreement granting custodial responsibility during  
 228 deployment is temporary and terminates after the deploying  
 229 parent returns from deployment unless the agreement has been  
 230 terminated before that time by court order or modification under  
 231 s. 61.725. The agreement does not create an independent,  
 232 continuing right to caretaking authority, decisionmaking

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233 authority, or limited contact for an individual granted  
 234 custodial responsibility.

235 (2) A nonparent granted caretaking authority,  
 236 decisionmaking authority, or limited contact by agreement has  
 237 standing to enforce the agreement until it is terminated by  
 238 court order or under s. 61.761, or modified under s. 61.725.

239 61.725 Modification of agreement.—

240 (1) The parents of a child may modify an agreement granting  
 241 custodial responsibility by mutual consent.

242 (2) If an agreement is modified before deployment of a  
 243 deploying parent, the modification must be in writing and signed  
 244 by both parents and any nonparent granted custodial  
 245 responsibility under the modified agreement.

246 (3) If an agreement is modified during deployment of a  
 247 deploying parent, the modification must be agreed to in a record  
 248 by both parents and any nonparent granted custodial  
 249 responsibility.

250 61.727 Power of attorney.—A deploying parent may, by power  
 251 of attorney, grant all or part of custodial responsibility to an  
 252 adult nonparent for the period of deployment if no other parent  
 253 possesses custodial responsibility, or if a court order  
 254 currently in effect prohibits contact between the child and the  
 255 other parent. The deploying parent may revoke the power of  
 256 attorney by signing a revocation of the power of attorney.

257 61.729 Filing custodial responsibility agreement or power  
 258 of attorney with court.—An agreement or power of attorney must  
 259 be filed within a reasonable time with a court that has entered  
 260 an order in effect relating to custodial responsibility or child  
 261 support concerning the child who is the subject of the agreement

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262 or power. The case number and heading of the pending case  
 263 concerning custodial responsibility or child support must be  
 264 provided to the court with the agreement or power.

265 61.733 Proceeding for temporary custody order.—

266 (1) After a deploying parent receives notice of deployment  
 267 and until the deployment terminates, a court may issue a  
 268 temporary order granting custodial responsibility unless  
 269 prohibited by the Servicemembers Civil Relief Act, Title 50,  
 270 Appendix U.S.C. ss. 501 et seq. A court may not issue a  
 271 permanent order granting custodial responsibility without the  
 272 consent of the deploying parent.

273 (2) (a) At any time after a deploying parent receives notice  
 274 of deployment, either parent may file a motion regarding  
 275 custodial responsibility of a child during deployment. The  
 276 motion must be filed in a pending proceeding for custodial  
 277 responsibility in a court with jurisdiction under s. 61.707 or,  
 278 if a pending proceeding does not exist in a court with  
 279 jurisdiction under s. 61.707, the motion must be filed in a new  
 280 action for granting custodial responsibility during deployment.

281 (b) If a motion to grant custodial responsibility is filed  
 282 under paragraph (a) before a deploying parent deploys, the court  
 283 shall conduct an expedited hearing.

284 61.735 Testimony by electronic means.—In a proceeding for a  
 285 temporary custody order, a party or witness who is not  
 286 reasonably able to appear in person may appear, provide  
 287 testimony, and present evidence by electronic means unless the  
 288 court finds good cause to require in-person testimony.

289 61.737 Effect of prior judicial order or agreement.—In a  
 290 proceeding for a temporary grant of custodial responsibility:

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291 (1) A prior judicial order granting custodial  
 292 responsibility in the event of deployment is binding on the  
 293 court unless circumstances meet the requirements authorized by  
 294 general law for modifying a judicial order regarding custodial  
 295 responsibility.

296 (2) The court shall enforce a prior written agreement  
 297 between the parents for granting custodial responsibility in the  
 298 event of deployment, including an agreement for custodial  
 299 responsibility during deployment, unless the court finds that  
 300 the agreement is not in the best interest of the child.

301 61.739 Grant of caretaking authority to nonparent.-

302 (1) Upon the motion of a deploying parent and in accordance  
 303 with general law, if it is in the best interest of the child, a  
 304 court may grant caretaking authority to a nonparent who is an  
 305 adult family member of the child or an adult with whom the child  
 306 has a close and substantial relationship.

307 (2) Unless a grant of caretaking authority to a nonparent  
 308 is agreed to by the other parent, the grant is limited to an  
 309 amount of time that may not exceed:

310 (a) The amount of time granted to the deploying parent  
 311 under a permanent custody order; however, the court may add  
 312 travel time necessary to transport the child; or

313 (b) In the absence of a permanent custody order that is  
 314 currently in effect, the amount of time the deploying parent  
 315 habitually cared for the child before being notified of  
 316 deployment; however, the court may add travel time necessary to  
 317 transport the child.

318 (3) If the deploying parent is unable to exercise  
 319 decisionmaking authority, a court may grant part of that

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320 authority to a nonparent who is an adult family member of the  
 321 child or an adult with whom the child has a close and  
 322 substantial relationship. If a court grants the authority to a  
 323 nonparent, the court shall specify the decisionmaking powers  
 324 granted.

325 61.741 Grant of limited contact.-A court shall grant  
 326 limited contact to a nonparent who is a family member of the  
 327 child or an individual with whom the child has a close and  
 328 substantial relationship on motion of a deploying parent and in  
 329 accordance with general law unless the court finds that limited  
 330 contact with a nonparent would not be in the best interest of  
 331 the child.

332 61.743 Nature of authority created by temporary custody  
 333 order.-

334 (1) A grant of authority is temporary and terminates after  
 335 the deploying parent returns from deployment unless the grant  
 336 has been terminated before that time by court order. The grant  
 337 does not create an independent, continuing right to caretaking  
 338 authority, decisionmaking authority, or limited contact to an  
 339 individual granted temporary custody.

340 (2) A nonparent granted caretaking authority,  
 341 decisionmaking authority, or limited contact has standing to  
 342 enforce the grant until it is terminated by court order or under  
 343 this part.

344 61.745 Content of temporary custody order.-An order  
 345 granting custodial responsibility, when applicable, must:

346 (1) Designate the order as temporary and provide for  
 347 termination after the deploying parent returns from deployment.

348 (2) Identify, to the extent feasible, the destination,

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349 duration, and conditions of the deployment.

350 (3) Specify the allocation of caretaking authority,  
 351 decisionmaking authority, or limited contact among the deploying  
 352 parent, the other parent, and any nonparent.

353 (4) Provide a process to resolve any dispute that may arise  
 354 if the order divides caretaking or decisionmaking authority  
 355 between individuals, or grants caretaking authority to one  
 356 individual and limited contact to another individual.

357 (5) Provide for liberal communication between the deploying  
 358 parent and the child during deployment, including through  
 359 electronic means, unless it is not in the best interest of the  
 360 child, and allocate any costs of communication.

361 (6) Provide for liberal contact between the deploying  
 362 parent and the child during the time the deploying parent is on  
 363 leave or otherwise available, unless it is not in the best  
 364 interest of the child.

365 (7) Provide for reasonable contact between the deploying  
 366 parent and the child after the parent's return from deployment  
 367 until the temporary order is terminated, even if the time of  
 368 contact exceeds the time the deploying parent spent with the  
 369 child before entry of the temporary order.

370 61.747 Order for child support.-If a court has issued an  
 371 order granting caretaking authority, or an agreement granting  
 372 caretaking authority has been executed, the court may enter a  
 373 temporary order for child support authorized by general law if  
 374 the court has jurisdiction under the Uniform Interstate Family  
 375 Support Act.

376 61.749 Modifying or terminating grant of custodial  
 377 responsibility or limited contact to nonparent.-

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378 (1) Except for an agreement under s. 61.723, or as  
 379 otherwise provided in subsection (2), and consistent with the  
 380 Servicemembers Civil Relief Act, Title 50, Appendix U.S.C. ss.  
 381 501 et seq., a court may modify or terminate a temporary grant  
 382 of custodial responsibility on motion of a deploying parent,  
 383 other parent, or any nonparent granted caretaking authority if  
 384 the modification or termination is consistent with this part and  
 385 is in the best interest of the child. A modification is  
 386 temporary and terminates after the deploying parent returns from  
 387 deployment, unless the grant has been terminated before that  
 388 time by court order.

389 (2) The court shall terminate a grant of limited contact on  
 390 motion of a deploying parent.

391 61.761 Procedure for terminating temporary agreement  
 392 granting custodial responsibility.-

393 (1) After a deploying parent returns from deployment, a  
 394 deploying parent and the other parent may file with the court an  
 395 agreement to terminate a temporary order for custodial  
 396 responsibility.

397 (2) After an agreement has been filed, it shall terminate:

398 (a) On the date specified on an agreement to terminate  
 399 under subsection (1); or

400 (b) On the date the agreement is signed by the deploying  
 401 parent and the other parent if the agreement to terminate does  
 402 not specify a date.

403 (3) In the absence of an agreement to terminate under (1),  
 404 a temporary agreement granting custodial responsibility  
 405 terminates 60 days after the deploying parent gives notice of  
 406 return from deployment to the other parent.

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407 (4) If a temporary agreement granting custodial  
408 responsibility was filed with a court pursuant to s. 61.729, an  
409 agreement to terminate must be filed with the court within a  
410 reasonable time after the deploying parent and other parent sign  
411 the agreement. The case number and heading of the case  
412 concerning custodial responsibility or child support must be  
413 provided to the court with the agreement to terminate.

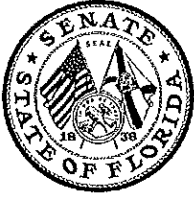
414 (5) A proceeding seeking to prevent termination of a  
415 temporary order for custodial responsibility is governed by  
416 general law.

417 61.763 Visitation before termination of temporary grant of  
418 custodial responsibility.—From the time a deploying parent  
419 returns from deployment until a temporary agreement or order for  
420 custodial responsibility is terminated, the court shall issue a  
421 temporary order granting the deploying parent reasonable contact  
422 with the child even if the time of contact exceeds the time the  
423 deploying parent spent with the child before deployment unless  
424 it is not in the best interest of the child.

425 61.771 Relation to electronic signatures in Global and  
426 National Commerce Act.—This act modifies, limits, or supersedes  
427 the Electronic Signatures in Global and National Commerce Act,  
428 15 U.S.C. s. 7001 et seq., but does not modify, limit, or  
429 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or  
430 authorize electronic delivery of any of the notices described in  
431 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

432 61.773 Applicability.—This act does not affect the validity  
433 of a temporary court order concerning custodial responsibility  
434 during deployment entered before July 1, 2018.

435 Section 3. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 1, 2018

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I respectfully request that **Senate Bill #1598**, relating to Deployed Parent Custody and Training, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "K. Passidomo".

---

Senator Kathleen Passidomo  
Florida Senate, District 28



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 416

INTRODUCER: Banking and Insurance Committee and Senator Thurston

SUBJECT: Governance of Banks and Trust Companies

DATE: February 6, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 416 amends the Financial Institution Codes to expand the pool of eligible individuals who may qualify to serve as a director, president, or chief executive officer of a new or existing bank or trust company that is subject to regulation by the Office of Financial Regulation (OFR). Further, the bill clarifies and revises the limitations on corporate investments.

For existing and new state-chartered banks and trust companies, the bill extends the period, from 3 to 5 years, during which certain officers and directors must have achieved at least 1 year of direct financial institution experience. Under current law, at least two of the proposed directors, who are not also proposed officers, must have the requisite experience within the 3 years prior to the date of the application for charter. Likewise, for existing state-chartered banks or trust companies, the president, chief executive officer, or any other person with an equivalent rank, must have had at least 1 year of direct experience within the last 3 years.

The bill requires that at least a majority, rather than three-fifths, of the directors of a state-chartered bank or trust company must have resided in this state for at least 1 year preceding their election and must continue their residency in Florida for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement for national banks.

Lastly, the bill amends current law to clarify an ambiguity in the interpretation of investment limits relating to corporate obligations or corporate bonds. The bill clarifies that:

- The types of entities for which the limitation on investments in corporations applies are subsidiary corporations and affiliates.
- The limitation on investments in corporations applies to an aggregate of any combination of stocks, obligations, and other securities of subsidiary corporations and affiliates.
- The aggregate of such investments may not exceed 10 percent of the total assets of the bank.

The bill has no fiscal impact on the Office of Financial Regulation.

## II. Present Situation:

The United States has a dual banking system, under which banks may be chartered by state or federal regulators.<sup>1</sup> State-chartered banks have both a state regulator and a federal regulator; the Office of Financial Regulation (OFR) is the state regulator of banks chartered in Florida. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System; the primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation.<sup>2</sup> National banks are chartered by the Office of the Comptroller of the Currency under the National Bank Act.<sup>3</sup>

### Regulation of State-Chartered Financial Institutions in Florida

The OFR regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to provide for and promote the safety and soundness of financial institutions while preserving the integrity of Florida's markets and financial service industries.<sup>4</sup> As of June 30, 2017, the Division of Financial Institutions within the OFR licensed 195 financial institutions.<sup>5</sup>

Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes). The codes include:

- Ch. 655, F.S., relating to financial institutions generally;
- Ch. 657, F.S., relating to credit unions;
- Ch. 658, F.S., relating to banks and trust companies;
- Ch. 660, F.S., relating to trust business;
- Ch. 663, F.S., relating to international banking;
- Ch. 665, F.S., relating to associations; and
- Ch. 667, F.S., relating to savings banks.<sup>6</sup>

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<sup>1</sup> Julie Stackhouse, Federal Reserve Bank of St. Louis, *Why America's Dual Banking System Matters* (Sept. 19, 2017), <https://www.stlouisfed.org/on-the-economy/2017/september/americas-dual-banking-system-matters> (last visited Jan. 26, 2018).

<sup>2</sup> 12 U.S.C. § 1813(q).

<sup>3</sup> 12 U.S.C. § 38; 12 U.S.C. § 1813(q).

<sup>4</sup> Section 655.001, F.S.

<sup>5</sup> Office of Financial Regulation, *Fast Facts*, p. 4 (5<sup>th</sup> ed. Dec. 2017), <https://www.flofr.com/StaticPages/documents/FastFacts.pdf> (last visited Jan. 26, 2018). The OFR regulated 95 banks, 66 credit unions, 21 international bank offices, and 13 trusts.

<sup>6</sup> Section 655.005(1)(k), F.S.

## Qualifications of Officers and Directors

### *New or De Novo State-Chartered Bank or Trust Company*

Section 658.19, F.S., governs the organization of state-chartered banks and trust companies. An applicant must submit financial, business, and reasonably required biographical information for each proposed director, executive officer, and, if applicable, each trust officer. The OFR must approve the application if it finds the proposed bank's or trust company's officers and directors.<sup>7,8</sup>

- Evince sufficient financial experience, ability, standing, and reputation;
- Have sufficient business experience, ability, standing and reputation to indicate reasonable promise of successful operation of the bank or trust company;
- Have not have been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, F.S., relating to the control of money laundering and terrorist financing, and ch. 896, F.S., relating to offenses against financial institutions;

At least two of the proposed directors who are not also proposed officers must have had at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 3 years before the application date. If the applicant demonstrates that at least one of the proposed directors has *very substantial experience* as an executive officer, director, or regulator of a financial institution more than 3 years before the date of the application, the office may modify the requirement and permit only one director to have direct financial institution experience within the last 3 years. The proposed president or chief executive officer must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.<sup>9</sup>

### *Existing State-Chartered Bank or Trust Company*

A state-chartered bank or trust company must have at least five directors and at least a majority of the directors must be citizens of the United States.<sup>10</sup> At least three-fifths of the directors must have resided in this state for at least 1 year preceding their election and must continue their residency in Florida for the duration of their time in office.<sup>11</sup>

A state-chartered bank or trust company with total assets of less than \$150 million must have at least one director who is not also an officer of the bank or trust company with at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the preceding 3 years.<sup>12</sup> A bank or trust company with more than \$150 million in total assets requires at least two directors, who are not also officers of the bank or trust company, to have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the last 3 years. The president, chief executive officer, or other person who has

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<sup>7</sup> Section 658.21, F.S.

<sup>8</sup> Office of Financial Regulation, Division of Financial Institutions, *Guide to Organizing a New State Bank in Florida* (Dec. 7, 2010), available at: <https://www.flofr.com/PDFs/guide.pdf> (last visited Jan. 26, 2018).

<sup>9</sup> Section 658.21(4), F.S.

<sup>10</sup> Section 658.33, F.S.

<sup>11</sup> Section 658.33(2), F.S.

<sup>12</sup> *Id.*

equivalent rank must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.<sup>13</sup>

### ***Nationally Chartered Bank or Trust Company***

The Office of the Comptroller of Currency (Comptroller) has different requirements relating to the directors or officers of a nationally chartered bank or trust company. Every director must be a citizen of the United States. At least a majority of the directors must have resided in the state, territory, or district in which the association is located, or within 100 miles of the location of the office of the association, for at least 1 year immediately preceding their election, and must be residents of the state or within 100-mile territory of the location of the association during their term of office. However, the Comptroller has the discretion to waive the residency and citizenship requirements as they apply to not more than a minority of the total number of directors.<sup>14</sup>

### **Permissible Investments**

A bank or trust company may invest its funds, subject to the limits of s. 658.67, F.S. These limits state that a bank or trust company may only invest:

- Up to 25 percent of its capital accounts in corporate obligations of any one corporation that is not its own affiliate or subsidiary; and
- Up to an aggregate of 10 percent of its total assets in the stock, obligations, or other securities of subsidiary corporations or other corporations or entities.

These investment requirements are subject to two exceptions: 1) such investments may not exceed any limitation or prohibition of federal law; and 2) during a bank's first 3 years of existence, such investments may not exceed 5 percent of its total assets.<sup>15</sup>

The Financial Services Commission by rule, or the OFR by order, may further limit any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice.<sup>16</sup> The OFR must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved when determining whether an investment is an unsafe or unsound practice.<sup>17</sup>

## **III. Effect of Proposed Changes:**

**Section 1** amends s. 658.21, F.S., to require a proposed president or chief executive officer to have at least 1 year of direct experience as an executive officer, regulator, or director of a financial institution within the 5 years, rather than 3 years, preceding the application for a bank or trust company's state charter.

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<sup>13</sup> Section 658.33(5), F.S.

<sup>14</sup> See 12 U.S.C. s. 72 and 12 C.F.R. s. 5.20.

<sup>15</sup> Section 658.67(6), F.S.

<sup>16</sup> See s. 655.005(1), F.S. An unsafe or unsound practice is any practice or conduct found by the OFR to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members.

<sup>17</sup> *Id.*

The bill applies the updated experience timeframe to two of the proposed directors listed on the bank or trust's application, who are not also its proposed officers. However, the OFR may apply this requirement to only one proposed director if at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 5 years, versus 3, before the date of the application.

**Section 2** amends s. 658.33, F.S., to require that at least a majority, rather than three-fifths, of the applicant bank or trust company's directors have resided in Florida for at least 1 year preceding their election to the bank's or trust's board of directors and must continue their residency in Florida for the duration of their time in office. This change will align the residency requirement for Florida state-chartered banks with the residency requirement of national banks.

**Section 3** amends s. 658.67, F.S., to revise the limits on a bank or trust's investments in corporate obligations or corporate bonds. The bill clarifies that a bank may invest:

- In subsidiary corporations and affiliates, unless otherwise prohibited by federal law;
- Only up to 10 percent of its total assets; and
- Only up to 5 percent of its total assets during the first 3 years of the bank's existence.

**Section 4** provides the act will take effect July 1, 2018.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would expand the pool of eligible individuals who may qualify to serve as an officer or director of a proposed or existing state chartered bank or trust company.

C. Government Sector Impact:

The bill has no fiscal impact on the Office of Financial Regulation.<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 658.21, 658.33, and 658.67.

**IX. Additional Information:**

- A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on January 16, 2018:**

The CS clarifies investment limitations relating to corporate obligations or corporate bonds and provides technical changes.

- B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>18</sup> Office of Financial Regulation, *2018 Analysis of SB 416* (Oct. 17, 2017). On file with Banking and Insurance Committee.

By the Committee on Banking and Insurance; and Senator Thurston

597-02155-18

2018416c1

1 A bill to be entitled  
 2 An act relating to governance of banks and trust  
 3 companies; amending s. 658.21, F.S.; revising  
 4 requirements relating to the financial institution  
 5 experience of certain proposed directors and officers  
 6 of a proposed bank or trust company; amending s.  
 7 658.33, F.S.; revising the residency requirement for  
 8 certain directors of a bank or trust company; revising  
 9 requirements relating to the financial institution  
 10 experience of certain officers of a bank or trust  
 11 company; amending s. 658.67, F.S.; revising instances  
 12 during which a bank may not own certain stock,  
 13 obligations, and other securities; providing an  
 14 effective date.  
 15  
 16 Be It Enacted by the Legislature of the State of Florida:  
 17  
 18 Section 1. Subsection (4) of section 658.21, Florida  
 19 Statutes, is amended to read:  
 20 658.21 Approval of application; findings required.—The  
 21 office shall approve the application if it finds that:  
 22 (4) The proposed officers have sufficient financial  
 23 institution experience, ability, standing, and reputation and  
 24 the proposed directors have sufficient business experience,  
 25 ability, standing, and reputation to indicate reasonable promise  
 26 of successful operation, and none of the proposed officers or  
 27 directors has been convicted of, or pled guilty or nolo  
 28 contendere to, any violation of s. 655.50, relating to the  
 29 control of money laundering and terrorist financing; chapter

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30 896, relating to offenses related to financial institutions; or  
 31 similar state or federal law. At least two of the proposed  
 32 directors who are not also proposed officers must have had at  
 33 least 1 year of direct experience as an executive officer,  
 34 regulator, or director of a financial institution within the 5 ~~3~~  
 35 years before the date of the application. However, if the  
 36 applicant demonstrates that at least one of the proposed  
 37 directors has very substantial experience as an executive  
 38 officer, director, or regulator of a financial institution more  
 39 than 5 ~~3~~ years before the date of the application, the office  
 40 may modify the requirement and allow the applicant to have only  
 41 one director who has ~~to have~~ direct financial institution  
 42 experience within the last 5 ~~3~~ years. The proposed president or  
 43 chief executive officer must have had at least 1 year of direct  
 44 experience as an executive officer, director, or regulator of a  
 45 financial institution within the last 5 ~~3~~ years.  
 46 Section 2. Subsections (2) and (5) of section 658.33,  
 47 Florida Statutes, are amended to read:  
 48 658.33 Directors, number, qualifications; officers.—  
 49 (2) Not less than a majority of the directors must, during  
 50 their whole term of service, be citizens of the United States,  
 51 and at least a majority ~~three-fifths~~ of the directors must have  
 52 resided in this state for at least 1 year preceding their  
 53 election and must be residents therein during their continuance  
 54 in office. In the case of a bank or trust company with total  
 55 assets of less than \$150 million, at least one, and in the case  
 56 of a bank or trust company with total assets of \$150 million or  
 57 more, two of the directors who are not also officers of the bank  
 58 or trust company must have had at least 1 year of direct

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59 experience as an executive officer, regulator, or director of a  
60 financial institution within the last 5 ~~3~~ years.

61 (5) The president, chief executive officer, or any other  
62 person, regardless of title, who has equivalent rank or leads  
63 the overall operations of a bank or trust company must have had  
64 at least 1 year of direct experience as an executive officer,  
65 director, or regulator of a financial institution within the  
66 last 5 ~~3~~ years. This requirement may be waived by the office  
67 after considering the overall experience and expertise of the  
68 proposed officer and the condition of the bank or trust company,  
69 as reflected in the most recent regulatory examination report  
70 and other available data.

71 Section 3. Subsection (6) of section 658.67, Florida  
72 Statutes, is amended to read:

73 658.67 Investment powers and limitations.—A bank may invest  
74 its funds, and a trust company may invest its corporate funds,  
75 subject to the following definitions, restrictions, and  
76 limitations:

77 (6) INVESTMENTS IN CORPORATIONS AND OTHER ENTITIES.—Except  
78 as limited or prohibited by federal law, Up to an aggregate of  
79 10 percent of the total assets of a bank may invest be invested  
80 in the stock, obligations, and ~~or~~ other securities of subsidiary  
81 corporations and affiliates. The aggregate of such investments  
82 may not exceed 10 percent of the total assets of the bank. ~~or~~  
83 other corporations or entities, except as limited or prohibited  
84 by federal law, and except that During the first 3 years of  
85 existence of a bank, such investments are limited to 5 percent  
86 of the total assets of the bank. The commission by rule, or the  
87 office by order, may further limit any type of investment made

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2018416c1

88 pursuant to this subsection if it finds that such investment  
89 would constitute an unsafe or unsound practice.

90 Section 4. This act shall take effect July 1, 2018.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



**"Agenda Request SB 416.pdf" Not Found!!!**

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/7/2018

Meeting Date

416

Bill Number (if applicable)

Topic Governance of Banks + Trusts Companies

Amendment Barcode (if applicable)

Name Katie Crofoot (crow-foot)

Job Title Asst. VP of Gov't Relations

Address 1001 Thomasville Rd.

Street

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Tallahassee

FL

3203

Email Kcrofoot@floridabankers.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SM 940

INTRODUCER: Senator Rodriguez

SUBJECT: Puerto Rico

DATE: February 6, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SM 940 urges Congress to incorporate the territory and resident United States citizens of Puerto Rico into the United States and apply, without discrimination or inequality, all law and policy in Puerto Rico on the same basis as in a state of the union.

Puerto Rico is currently classified as an “unincorporated territory.” An unincorporated territory is an area where Congress has not expressly and fully extended all of the United States Constitution within the meaning of Article IV, Section 3. In contrast, an “incorporated territory” is a territory to which the United States Constitution fully applies. Although Puerto Rico has been a possession of the United States since 1898, it has never been incorporated into the United States as other territories have been.

The memorial recounts the historical and legal relationship of the United States and Puerto Rico since 1898. It concludes by urging Congress to incorporate the territory and United States resident citizens of Puerto Rico into the United States.

**II. Present Situation:**

**The Commonwealth of Puerto Rico**

*Status*

The Commonwealth of Puerto Rico is an unincorporated territory of the United States. The term “commonwealth” does not convey a particular relationship or political status but broadly describes a self-governing area that has adopted and operates under its own constitution. Congress will not unilaterally withdraw a commonwealth’s right to govern itself. An “unincorporated territory” is an area where Congress has not expressly and fully extended the United States Constitution with the meaning of Article IV, Section 3 of the United States

Constitution.<sup>1</sup> An “incorporated territory” is defined as a territory to which the U.S. Constitution is fully applicable. Persons born in incorporated territories on or after the time the territory became part of the United States may claim citizenship under the 14th Amendment.<sup>2</sup>

### *History and Developments*

In the late 1800s and early 1900s, the sovereignty of the United States was extended to territories overseas. Unlike Alaska and Hawaii, these outlying territories were not considered to be a part of this country and it was determined that the Constitution did not fully apply to them. At the end of the Spanish-American War, Spain ceded Puerto Rico to the United States under the terms of the Treaty of Paris of 1899<sup>3</sup> and a brief U.S. military government was established.

In 1900, Congress passed the Foraker Act which established a civilian form of government in Puerto Rico and provided for an elected, non-voting member of Congress known as a Resident Commissioner in Congress.<sup>4</sup> The act also applied certain federal laws to the islands and “made United States coins sole legal tender in payment of debts . . . .”<sup>5</sup>

The U.S. Supreme Court decided a series of cases between 1901 and 1904, known collectively as the “Insular Cases.”<sup>6</sup> The term insular means pertaining to, or constituting, an island.<sup>7</sup> The Constitutional struggle in those cases was whether the United States could acquire territories and people without making those territories states.<sup>8</sup> The Court ultimately decided that the territories belonged to the United States, but were not a part of the United States. Incorporated territories were distinguished from unincorporated territories, and those distinctions remain today. For Puerto Rico, this meant that constitutional protections only apply if they are fundamental and that there is no guarantee of statehood.<sup>9</sup>

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<sup>1</sup> Article IV, Section 3 provides that “New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.”

“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”

<sup>2</sup> U.S. DEPARTMENT OF STATE, FOREIGN AFFAIRS MANUAL AND HANDBOOK, 7 FAM 1121.2-1, DEFINITION OF TERMS, ACQUISITION OF U.S. NATIONALITY IN U.S. TERRITORIES AND POSSESSIONS, [https://fam.state.gov/FAM/07FAM/07FAM1120.html#M1121\\_2\\_1](https://fam.state.gov/FAM/07FAM/07FAM1120.html#M1121_2_1)

<sup>3</sup> *Id.*, at 7 FAM 1121.1, How Territories and Possessions Were Acquired.

<sup>4</sup> Library of Congress, The World of 1898: The Spanish-American War, Foraker Act (Organic Act of 1900), <http://www.loc.gov/rr/hispanic/1898/foraker.html>

<sup>5</sup> 48 U.S.C. s. 731 *et seq.*, Codification note after s. 755, <https://www.gpo.gov/fdsys/pkg/USCODE-2009-title48/html/USCODE-2009-title48-chap4-subchapI.htm>.

<sup>6</sup> Legal scholars disagree as to which cases should be the actual Insular cases. The various lists often include: *DeLima v. Bidwell*, 182 U.S. 1 (1901), *Goetze v. United States*, 182 U.S. 221 (1901), *Armstrong v. United States*, 182 U.S. 243 (1901), *Downes v. Bidwell*, 182 U.S. 244 (1901), *Huus v. New York & Porto Rico S.S. Co.*, 182 U.S. 392 (1901), *Dooley v. United States*, 183 U.S. 151 (1901), *Fourteen Diamond Rings v. United States*, 183 U.S. 176 (1901), *Hawaii v. Mankichi*, 190 U.S. 197 (1903), *Kepner v. United States*, 195 U.S. 100 (1904), *Dorr v. United States*, 195 U.S. 138 (1904), *Gonzales v. Williams*, 192 U.S. 1 (1904). Insular Cases, Wikipedia [https://en.wikipedia.org/wiki/Insular\\_Cases](https://en.wikipedia.org/wiki/Insular_Cases).

<sup>7</sup> The American Heritage Dictionary 667 (1985).

<sup>8</sup> Lana Birbrair, *The Insular Cases; Constitutional Experts Assess the Status of Territories Acquired in the Spanish American War*, Harvard Law Today (March 18, 2014), <https://today.law.harvard.edu/insular-cases-constitutional-experts-assess-status-territories-acquired-spanish-american-war-video/>.

<sup>9</sup> *Id.*

The Jones-Shafroth Act of 1917<sup>10</sup> granted citizenship to all residents of Puerto Rico.<sup>11</sup> The act established a bill of rights for the territory,<sup>12</sup> created a bicameral legislature,<sup>13</sup> and increased the term of the Resident Commissioner from two to four years.<sup>14</sup> However, Puerto Rico remained an unincorporated territory of the United States.

Under the Nationality Act of 1940, which was effective from 1941-1952, Puerto Rico came under the definition of the “United States” but was not made an incorporated territory. Pursuant to the Immigration and Nationality Act of 1952,<sup>15</sup> which is presently in effect, people born in Puerto Rico on or after December 24, 1952, receive U.S. citizenship at the time of their birth on the same terms as people born in other parts of the United States.

### ***Modern Self-Government***

Congress passed the Puerto Rico Federal Relations Act of 1950 which laid the foundation for self-government. The act permitted the Legislature of Puerto Rico to call for an island-wide referendum to establish a constitutional convention to draft a constitution. The constitution was required to provide a republican form of government and include a bill of rights.<sup>16</sup> The new constitution was approved by the voters on March 3, 1952, by Congress on July 3, 1952,<sup>17</sup> and became effective on July 25, 1952.<sup>18</sup>

### ***Puerto Rico’s Population Today***

According to the United States Census Bureau, Puerto Rico’s estimated population was 3,337,177 people as of July 1, 2017.<sup>19</sup> The Pew Research Center states that 84,000 people left Puerto Rico in 2015 for the United States mainland. This migration is due in large measure to the economic recession that has lasted for almost a decade. Similarly, tax revenues have also declined further creating financial problems for the island.<sup>20</sup> Many residents who leave Puerto Rico settle in Florida. As of 2014, more than 1 million Hispanics of Puerto Rican origin have settled here.<sup>21</sup>

### ***Natural Disasters***

Hurricane Irma, one of the Atlantic’s most powerful storms, skirted north of Puerto Rico on September 5, 2017, as a Category 5 storm. High winds, rain, and flashfloods damaged the island,

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<sup>10</sup> “An Act to Provide a Civil Government for Porto Rico, and for Other Purposes” (sic), Pub. L. No. 64-368, 39 Stat. 951 (Mar. 2, 1917) (Jones-Shafroth Act). Generally codified at 48 U.S.C. ch. 4.

<sup>11</sup> Jones-Shafroth Act, s. 5.

<sup>12</sup> Jones-Shafroth Act, s. 2.

<sup>13</sup> Jones-Shafroth Act, s. 25.

<sup>14</sup> Jones-Shafroth Act, s. 29.

<sup>15</sup> *Supra* at 2, 7 FAM 1121.4-2

<sup>16</sup> 48 U.S.C. ss. 731a-731e.

<sup>17</sup> Pub. L. No. 82-447 (July 3, 1952).

<sup>18</sup> Department of State, Office of the Historian, Foreign Relations of the United States, 1952-1954, United Nations Affairs, Volume III, Document 911 (Sept. 2, 1953), <https://history.state.gov/historicaldocuments/frus1952-54v03/d911>.

<sup>19</sup> United States Census Bureau, QuickFacts, Puerto Rico, <https://www.census.gov/quickfacts/PR>.

<sup>20</sup> Jens Manuel Krogstad, Pew Research Center, Puerto Ricans Leave in Record Numbers for Mainland U.S. (Oct.14, 2015) <http://www.pewresearch.org/fact-tank/2015/10/14/puerto-ricans-leave-in-record-numbers-for-mainland-u-s/>.

<sup>21</sup> *Id.*

wiping out electricity to almost two-thirds of the residents, and leaving at least three people dead.<sup>22</sup>

On September 20, 2017, Hurricane Maria made landfall as a Category 4 storm, devastating the island. The infrastructure was crippled. Electricity was cut off to all of the island. Many homes and buildings were destroyed, roads became impassable rivers. Access to clean water and food was severely limited. The damage has been estimated at \$94 billion.<sup>23</sup>

### ***Rights and Benefits***

United States citizens residing in Puerto Rico today have many of the same rights, privileges, and immunities enjoyed by citizens of all states in the same manner as if Puerto Rico were a state.<sup>24</sup> Residents in Puerto Rico may qualify for benefits under Old-Age, Survivors, and Disability Insurance administered by the Social Security Administration.<sup>25</sup> Those in Puerto Rico may also enroll in Medicaid and the Children's Health Insurance Program (CHIP).<sup>26</sup> However, Supplemental Security Income benefits are not provided to residents in Puerto Rico.<sup>27</sup>

For the purposes of federal income taxes, resident United States citizens of Puerto Rico are treated differently than United States citizens in other states. Puerto Rico residents may exclude all sources of income from sources in the Commonwealth when reporting income for United States income taxes. Those taxpayers do not need to file a tax return if all income is from sources in Puerto Rico. However, if they have income from sources outside Puerto Rico that exceeds the filing thresholds, they are required to file a United States tax return.<sup>28</sup>

Although the residents of Puerto Rico enjoy many privileges of U.S. citizens, they do not have a voting representative in the U.S. House of Representatives, are not represented by two Senators in the U.S. Senate, nor do they have a vote in the U.S. presidential elections.

### **III. Effect of Proposed Changes:**

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto. Memorials often

<sup>22</sup> Alex Johnson, Daniel Arkin, Jason Cumming, and Bill Karins, NBC News, *Hurricane Irma Skirts Puerto Rico, Leaves 1 Million Without Power* (Sept. 7, 2017), <https://www.nbcnews.com/storyline/hurricane-irma/hurricane-irma-skirts-puerto-rico-lashing-it-powerful-winds-flooding-n799086>.

<sup>23</sup> Reliefweb, United Nations Office for the Coordination of Humanitarian Affairs, *Quick Facts: Hurricane Maria's Effect on Puerto Rico* (Jan. 19, 2018), <https://reliefweb.int/report/puerto-rico-united-states-america/quick-facts-hurricane-marias-effect-puerto-rico>.

<sup>24</sup> 48 U.S.C. s. 737.

<sup>25</sup> Social Security Administration, *2016 Annual Statistical Supplement: Social Security (Old-Age, Survivors, and Disability Insurance)*, <https://www.ssa.gov/policy/docs/statcomps/supplement/2016/oasdi.pdf>.

<sup>26</sup> As of June 2105, 1,671,657 people in Puerto Rico were enrolled in Medicaid or CHIP. At <https://www.medicaid.gov/medicaid/by-state/puerto-rico.html>.

<sup>27</sup> Social Security Administration, *2016 Annual Statistical Supplement: Supplemental Security Income*, <https://www.ssa.gov/policy/docs/statcomps/supplement/2016/ssi.pdf>.

<sup>28</sup> INTERNAL REVENUE SERVICE, TOPIC NUMBER 901: TOPIC NUMBER: 901 - IS A PERSON WITH INCOME FROM PUERTO RICO REQUIRED TO FILE A U.S. FEDERAL INCOME TAX RETURN? (Updated Jan. 4, 2018), <https://www.irs.gov/taxtopics/tc901>.

express the Legislature's desire that Congress take action on a certain matter or request that Congress propose an amendment to the United States Constitution.<sup>29</sup>

This memorial urges Congress to incorporate the territory and resident United States citizens of Puerto Rico into the United States and apply all law and policy in Puerto Rico, without discrimination or inequality, on the same basis as in a state of the union.

Copies of the memorial are to be sent to the President, the President of the United States Senate, the Speaker of the House of Representatives, and each member of the Florida delegation to Congress.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>29</sup>Office of Bill Drafting Services, *Manual for Drafting Legislation*, The Florida Senate, at 137-138. (2009), available at <http://intranet.flsenate.gov/Document?filePath=/Publications%20and%20Forms/Publications/&fileName=Bill%20Drafting%20Manual.pdf>.

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Rodriguez

37-01203-18

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## Senate Memorial

A memorial to the Congress of the United States, urging Congress to apply law and policy in Puerto Rico without discrimination or inequality and to incorporate the Commonwealth of Puerto Rico into the United States.

WHEREAS, since 1898, the United States has administered the islands of Puerto Rico and its population as an unincorporated territory of the United States, and

WHEREAS, less than two years after acceding to sole and exclusive sovereignty over the islands of Puerto Rico, in 1900 the United States Congress enacted the law known as the Foraker Act, providing a civilian government for the territory, and

WHEREAS, in the *Insular Cases*, the United States Supreme Court recognized that the United States Constitution applies within the unincorporated territories of the United States, but the scope of such application was less than the full guarantees of individual liberty accorded to those residing in states or incorporated territories of the Union, and

WHEREAS, in 1917, the United States Congress enacted the Jones-Shafroth Act, providing for greater self-government and granting United States citizenship to all residents of Puerto Rico, and

WHEREAS, in the decision *Balzac v. People of Porto Rico*, the United States Supreme Court reiterated the holding of the *Insular Cases* and ruled that the United States Constitution applied only in part in the unincorporated territories, thus affirming the denial of right to trial by jury to the petitioner

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in that case, and

WHEREAS, the United States Supreme Court in *Balzac* also found that incorporation into the United States was a key step to statehood for any territory, and the incorporation could only be accomplished by express congressional declaration or by "implication so strong as to exclude any other view," and

WHEREAS, in 1950, Congress authorized the people of Puerto Rico to conduct a constitutional convention for the purpose of developing a constitution providing for more complete self-government by Puerto Rico, requiring such constitution to provide both a republican form of government and a bill of rights, and

WHEREAS, requiring a republican form of government to each state is a duty of the United States Congress under Article IV, section 4 of the United States Constitution, and

WHEREAS, pursuant to the authority granted by the United States Congress, the people of Puerto Rico met in convention and drafted a constitution meeting the requirements of the 1950 act, and the United States Congress approved the Constitution of the Commonwealth of Puerto Rico in 1952, and

WHEREAS, the territorial histories of other states such as Louisiana, Alaska, and Hawaii demonstrate a similar progress of self-government, from early congressional acts establishing basic civil government, to a more formally structured government conducted by the people of the particular territory, and eventually approval of an official state constitution, and

WHEREAS, the Constitution of the Commonwealth of Puerto Rico was approved before congressional approval of the proposed state constitutions for Alaska and Hawaii, and the subsequent

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59 admission of those states into the Union, and  
 60 WHEREAS, the granting of United States citizenship to the  
 61 people of Puerto Rico, requiring their self-governing  
 62 constitution to provide for a republican form of government and  
 63 a bill of rights, admitting residents of Puerto Rico into the  
 64 Armed Forces of the United States in which they have bravely and  
 65 honorably defended the United States as duty has required,  
 66 integrating all aspects of the economy of Puerto Rico into the  
 67 greater economy of the United States, and evolving the Puerto  
 68 Rico laws and judicial system from their Spanish origins into  
 69 provisions and process consistent with the laws and  
 70 jurisprudence of the United States, creates the strong and clear  
 71 implication that Puerto Rico *de facto* has been incorporated into  
 72 the United States, and  
 73 WHEREAS, citizens of the United States residing in Puerto  
 74 Rico currently are not entitled to the same treatment under  
 75 certain federal laws, such as the provision of Supplemental  
 76 Security Income from the Social Security Administration, as are  
 77 other citizens of the United States residing in the several  
 78 states of the Union, and  
 79 WHEREAS, the denial of equal treatment of United States  
 80 citizens residing in Puerto Rico under certain federal laws is  
 81 justified solely on the basis that Puerto Rico is not  
 82 incorporated into the United States despite over one hundred  
 83 years of assimilation into the culture, economy, and political  
 84 process of the United States, and  
 85 WHEREAS, the recent catastrophic impacts to Puerto Rico of  
 86 Hurricanes Irma and Maria, and the federal response to the  
 87 resulting humanitarian crisis, demonstrate a compelling need for

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88 the incorporation of Puerto Rico into the United States so that  
 89 responses to natural disasters in Puerto Rico have the same  
 90 priority and are conducted on the same basis as federal  
 91 responses to natural disasters elsewhere in the United States,  
 92 and  
 93 WHEREAS, integration into the United States, while  
 94 necessary to move towards statehood, will not automatically  
 95 confer statehood on Puerto Rico, NOW, THEREFORE,  
 96  
 97 Be It Resolved by the Legislature of the State of Florida:  
 98  
 99 That the United States Congress is urged to incorporate the  
 100 territory and resident United States citizens of Puerto Rico  
 101 into the United States and to apply all law and policy in Puerto  
 102 Rico on the same basis as in a state of the union without  
 103 discrimination or inequality.  
 104 BE IT FURTHER RESOLVED that the Secretary of State dispatch  
 105 copies of this memorial to the President of the United States,  
 106 the President of the United States Senate, the Speaker of the  
 107 United States House of Representatives, and each member of the  
 108 Florida delegation to the United States Congress.

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on General  
Government  
Commerce and Tourism  
Community Affairs  
Ethics and Elections  
Appropriations Subcommittee on Civil and Criminal  
Justice  
Rules

**SENATOR JOSE JAVIER RODRIGUEZ**

*Deputy Democratic Whip*  
37th District

January 31, 2018

Chairman Lizbeth Benacquisto  
Committee on Rules, Chair  
402 Senate Office Building  
404 S. Monroe St.  
Tallahassee, FL 32399-1100  
*Sent via email to Benacquisto.lizbeth@flsenate.gov*

Madam Chairman Benacquisto,

I respectfully request that you place SM 940 relating to Puerto Rico and SM 1382 relating to Venezuela on the agenda of the Senate Committee on Rules at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Regards,

Senator José Javier Rodríguez  
District 37, Miami

CC: John Phelps, Staff Director  
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365  
 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 8

INTRODUCER: Health Policy Committee and Senator Benacquisto and others

SUBJECT: Controlled Substances

DATE: January 31, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	<b>Favorable</b>
3.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 8 amends various sections of law to increase the regulation, training, and reporting required when prescribing and dispensing controlled substances. The bill:

- Restricts Medicaid managed care plans and health insurers from requiring prior authorization or step therapy or imposing any other conditions as a prerequisite to receiving medication-assisted treatment (MAT) services.
- Requires all prescribing practitioners to complete a two-hour training course on the proper manner to prescribe controlled substances.
- Requires applicable health care regulatory boards to create guidelines for prescribing controlled substances for the treatment of acute pain.
- Limits prescriptions to no more than three days of opioids listed in Schedule II to treat acute pain as defined in the bill. This limit is increased to seven days if determined to be medically necessary, and properly documented, by the prescribing practitioner.
- Requires clinics that are exempt from the requirement to register as a pain management clinic to obtain a certificate of exemption from the Department of Health (DOH).
- Requires pharmacists and dispensing practitioners to verify a patient's identity prior to dispensing controlled substances.
- Conforms an exemption allowing health care practitioners to dispense controlled substances in connection with a surgical procedure to the limits on prescribing established for Schedule II opioid medications.

- Creates an exemption to allow a physician to dispense Schedule II and III controlled substances approved by the United States Food and Drug Administration (FDA) for the MAT of his or her own patients.
- Adds and reschedules substances to the various schedules of controlled substances.
- Substantially rewords the Prescription Drug Monitoring Program (PDMP) with changes including, but not limited to:
  - Including Schedule V controlled substances in the list of drugs that must be reported to the PDMP, and eliminating an exemption for reporting controlled substances dispensed to minors under the age of 16;
  - Requiring prescribing practitioners to consult the PDMP before prescribing controlled substances; and
  - Allowing the DOH to coordinate and share Florida's PDMP data with other states' PDMPs.

The DOH will incur additional costs related to increased investigations of unlicensed pain management clinics. These costs may be offset through fees collected for initial issuance and renewal of pain management clinic exemption certificates.

The bill provides supplemental appropriations of:

- \$27,035,360 in non-recurring federal grants trust funds and \$15,520,000 in recurring general revenue funds to the DCF for substance use disorder treatment services.
  - From the \$15.5 million in recurring general revenue funds, the bill earmarks \$4.7 million of recurring general revenue funds for specific MAT drugs.
- \$6 million in recurring general revenue funds to the state courts administrator for substance abuse treatment services related to the criminal justice system. The bill requires these funds be spent on specific MAT drugs.
- \$5 million in recurring general revenue funds to the DOH to purchase naloxone for emergency medical services (EMS) responders.

The effective date of the bill is July 1, 2018, except that Sections 5, 6, 13, and 14 take effect January 1, 2019.

## **II. Present Situation:**

### **Opioid Abuse in Florida**

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. By nearly every measure, the opioid crisis has worsened in recent years. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2015, 2016 saw:

- 5,725 (35 percent more) opioid-related deaths;
- 6,658 (24 percent more) individuals died with one or more prescription drugs in their system;<sup>1</sup>
- 3,550 (40 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;

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<sup>1</sup> The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

- Occurrences of heroin increased by 31 percent, and deaths caused by heroin increased by 30 percent;
- Occurrences of fentanyl increased by 80 percent, and deaths caused by fentanyl increased by 97 percent;
- Occurrences of methadone (10 percent) and hydrocodone (2 percent) increased. Deaths caused by methadone (40 more) and hydrocodone (9 more) also increased;
- Occurrences of morphine increased by 38 percent, and deaths caused by morphine increased by 49 percent;
- Occurrences of oxycodone increased by 28 percent, and deaths caused by oxycodone also increased by 28 percent; and
- Occurrences of buprenorphine increased by 90 percent, and deaths caused by buprenorphine (14 more) increased.<sup>2</sup>

Additionally, collateral impacts of controlled substance and opioid misuse have increased. For example, between 2007 and 2015, the instance of neonatal abstinence syndrome – an infant disorder that occurs when babies are exposed to drugs in the womb before birth – increased by nearly 500 percent, from 536 cases to 2,487 cases. Overall hospital costs that can be attributed to the opioid crisis more than doubled between 2010 and 2015, from \$460 million to \$1.1 billion.<sup>3</sup>

### History of the Opioid Crisis

In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates. This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.<sup>4</sup> Between the early 2000s and the early 2010s, 93 of the top 100 oxycodone-dispensing doctors in the United States were in Florida,<sup>5</sup> and at one point, doctors in Florida bought 89 percent of all Oxycodone sold in the county.<sup>6</sup>

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics, creating the PDMP, and stricter regulation on selling, distributing, and dispensing controlled substances.<sup>7</sup> Between 2010 and 2014, deaths from prescription drugs dropped, but deaths from illegal opioids, such as heroin, began to rise.<sup>8</sup> As evidenced in the prescription controlled substance and opioid-related mortality data reported by the FDLE, deaths from prescription controlled substances are once

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<sup>2</sup> FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2016 Annual Report* (Nov. 2017) <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2016-Annual-Drug-Report.aspx> (last visited on Jan. 6, 2018).

<sup>3</sup> Florida Behavioral Health Association, *Florida's Opioid Crisis* (Jan. 2017) [http://www.fadaa.org/links/Opioid%20Media%20Kit\\_FINAL.pdf](http://www.fadaa.org/links/Opioid%20Media%20Kit_FINAL.pdf), (last visited on Jan. 6, 2018).

<sup>4</sup> National Institute on Drug Abuse, *Opioid Overdose Crisis*, (Jan. 2018) <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited on Jan. 6, 2018).

<sup>5</sup> Elaine Silvestrini, *Florida heals from pill mill epidemic*, TAMPA BAY TIMES, Aug. 30, 2014, available at <http://www.tbo.com/news/crime/florida-heals-from-pill-mill-epidemic-20140830/> (last visited on Jan. 6, 2018).

<sup>6</sup> Lizette Alvarez, *Florida Shutting 'Pill Mill' Clinics*, THE NEW YORK TIMES, Aug. 31, 2011, available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited on Jan. 6, 2018).

<sup>7</sup> See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

<sup>8</sup> *Supra* note 3

again on the rise. In early 2017, the United States Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic, and shortly thereafter, on May 3, 2017, Governor Rick Scott signed executive order 17-146 declaring the opioid epidemic a public health emergency in Florida.

The federal government and many states have mobilized to combat the opioid epidemic. The United States Department of Health and Human Services (HHS) has focused its efforts on five major priorities:

- Improving access to treatment and recovery services;
- Promoting use of overdose-reversing drugs;
- Strengthening the understanding of the epidemic through better public health surveillance;
- Providing support for cutting-edge research on pain and addiction; and
- Advancing better practices for pain management.<sup>9</sup>

Individual states have taken actions to combat the opioid crisis, such as: increasing the availability of Naloxone and other related medications to prevent overdose deaths, increasing the availability and funding of MAT, and establishing stricter guidelines and regulations on the prescribing and dispensing of controlled substances.

### **Medication-Assisted Treatment**

Medication-assisted treatment is the use of medications in combination with counseling and behavioral therapies for the treatment of substance use disorders.<sup>10</sup> Medications including buprenorphine (Suboxone and Subutex), methadone, and extended release naltrexone (Vivitrol) are effective in treating opioid use disorders. MAT medications do not substitute one addiction for another since, when properly administered, MAT medications do not cause a high but serve to reduce opioid cravings and withdrawal. Additionally, diversion of buprenorphine is uncommon and when diversion does occur it is primarily used to manage withdrawal symptoms. Patients treated with medications were more likely to remain in therapy compared to patients receiving treatment without medication.<sup>11</sup>

### **State and Federal Prescribing Guidelines**

#### ***CDC Prescribing Guidelines***

The CDC has established guidelines to reduce the risk of addiction and dependency when prescribing opioids. These guidelines are applicable to both chronic and acute pain and include:

- Not using opioids as first-line therapy.
- Establishing realistic goals for pain and function and discontinuing opioid therapy if the benefits do not outweigh the risks.
- Discussing the risks and benefits with patients before and during opioid therapy.

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<sup>9</sup> Supra note 4

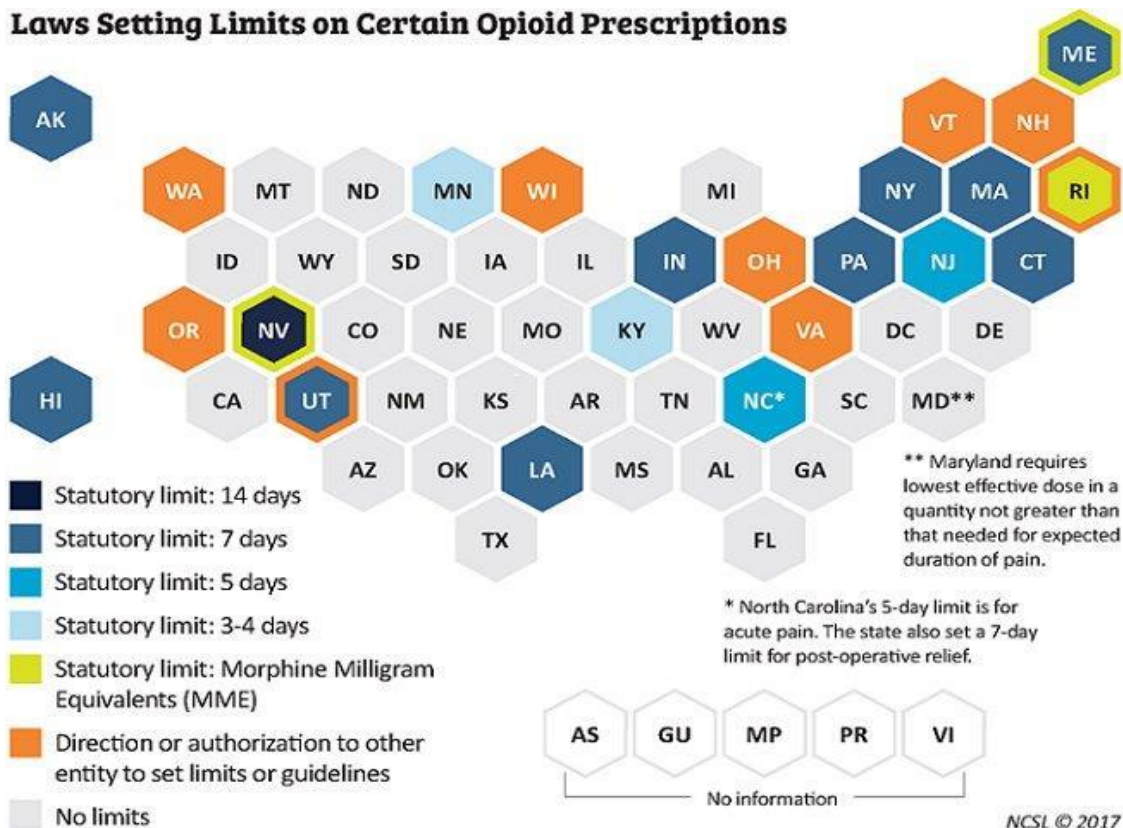
<sup>10</sup> MAT overview, Substance Abuse and Mental Health Services Administration, available at <https://www.integration.samhsa.gov/clinical-practice/mat/mat-overview>, (last visited on Jan. 17, 2018).

<sup>11</sup> Effective Treatments of Opioid Addiction, National Institute on Drug Abuse, available at <https://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/effective-treatments-opioid-addiction>, (last visited Jan. 17, 2018).

- Using immediate-release opioids at first and using the lowest effective dose.
- Prescribing short durations for acute pain. The CDC states that, generally, three days or less will be sufficient and more than seven days will rarely be needed.
- Evaluating benefits and harms within one to four weeks of starting the medication and at least every three months throughout the course the medication is prescribed.
- Reviewing PDMP data, using urine drug testing, and avoiding prescribing opioids and benzodiazepine concurrently.
- Offering treatment for opioid use disorders.<sup>12</sup>

**State Opioid Prescription Limits**

Beginning in 2016, more than 30 states have considered at least 130 bills related to opioid prescribing, and 24 states have enacted legislation that imposes some type of limit, guideline, or requirement related to opioid prescribing. Most legislation limits first time opioid prescriptions to a certain number of days’ supply, with seven days being most common. Some states have set limits as low as three days and as high as 14 days. In some cases, states may also set dosage limits using morphine milligram equivalents. Most states also specify that the dosage limits are for acute pain only or exclude chronic pain, palliative care, and cancer treatment.<sup>13</sup> Specific states’ laws can be seen on the map below:



<sup>12</sup> CDC Guidelines for Prescribing Opioids for Chronic Pain [https://www.cdc.gov/drugoverdose/pdf/guidelines\\_at-a-glance-a.pdf](https://www.cdc.gov/drugoverdose/pdf/guidelines_at-a-glance-a.pdf), (last visited Jan. 10, 2018).

<sup>13</sup> Prescribing policies: States Confront Opioid Overdose Epidemic, National Conference of State Legislatures, <http://www.ncsl.org/research/health/prescribing-policies-states-confront-opioid-overdose-epidemic.aspx> (last visited Jan. 10, 2018). A table of specific legislation is also available at this site under the tab: “Table: Legislation.”



## Florida's Prescription Drug Monitoring Program

Chapter 2009-197, Laws of Florida, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic database to monitor the prescribing and dispensing of certain controlled substances.<sup>14</sup> The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.<sup>15</sup> Dispensers have reported over 232 million controlled substance prescriptions to the PDMP since its inception.<sup>16</sup> Health care practitioners began accessing the PDMP on October 17, 2011.<sup>17</sup> Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.<sup>18</sup>

Dispensers of controlled substances listed in Schedule II, Schedule III, or Schedule IV<sup>19</sup> must report specific information to the PDMP database each time the controlled substance is dispensed by the close of the next business day after dispensing. The information required to be reported includes the:<sup>20</sup>

- Name of the dispensing practitioner and Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier;
- Date the prescription is dispensed;
- Name, address, and date of birth of the person to whom the controlled substance is dispensed; and
- Name, national drug code, quantity, and strength of the controlled substance dispensed.<sup>21</sup>

Certain acts of dispensing or administering are exempt from PDMP reporting. Current law exempts:

- A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in Florida.
- A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections.
- A practitioner when administering a controlled substance in the emergency room of a licensed hospital.

<sup>14</sup> Section 893.055(2)(a), F.S.

<sup>15</sup> Florida Dep't of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2013), available at [http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/\\_documents/2012-2013pdmp-annual-report.pdf](http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/_documents/2012-2013pdmp-annual-report.pdf) (last visited on Jan. 7, 2018).

<sup>16</sup> Florida Dep't of Health, *2016-2017 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2017), available at <http://www.floridahealth.gov/statistics-and-data/e-forcse/funding/2017PDMPAnnualReport.pdf> (last visited on Jan. 7, 2017).

<sup>17</sup> *Supra* note 13

<sup>18</sup> *Supra* note 13

<sup>19</sup> Currently, Florida is one of 16 states that do not require the dispensing of Schedule V controlled substances to be reported to their state's PDMP. For more details please see [http://pdmpassist.org/pdf/PDMP\\_Substances\\_Tracked\\_20171205.pdf](http://pdmpassist.org/pdf/PDMP_Substances_Tracked_20171205.pdf), (last visited on Jan. 8, 2018).

<sup>20</sup> The specific information reported depends upon the whether the reporter is a pharmacy or practitioner.

<sup>21</sup> *See* s. 893.055(3), F.S.

- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.
- A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient while the patient is present and receiving care as ordered by the patient's treating physician.<sup>22</sup>

### *Accessing the PDMP database*

Section 893.0551, F.S., makes certain identifying information<sup>23</sup> of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and in article I, section 24(a) of the State Constitution.<sup>24</sup>

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists, and their designees.<sup>25</sup> Currently, prescribers are not required to consult the PDMP database before prescribing a controlled substance for a patient; however, physicians and pharmacists queried the database more than 3.7 million times in 2012, over 9.3 million times in 2014, over 18.6 million times in 2015, and over 35.8 million times in 2016.<sup>26</sup> Qualified physicians who are issuing physician certifications for the medical use of marijuana under s. 381.986, F.S., are currently required to review the patient's controlled drug prescription history in the PDMP.<sup>27</sup>

Indirect access to the PDMP database is provided to:

- The DOH or certain health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations<sup>28</sup> involving potential criminal activity, fraud, or theft regarding prescribed controlled substances if the law enforcement agency has entered into a user agreement with the DOH;
- Patients, or the legal guardians or designated health care surrogates, of incapacitated patients; and
- Impaired practitioner consultants.<sup>29</sup>

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<sup>22</sup> Section 893.055(5), F.S.

<sup>23</sup> Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.

<sup>24</sup> Section 893.0551(2)(a)-(h), F.S.

<sup>25</sup> Section 893.055(7)(b), F.S.

<sup>26</sup> *Supra* notes 14 and 15.

<sup>27</sup> See s. 381.986(4)(a)5., F.S.

<sup>28</sup> Section 893.055(1)(h), F.S., defines an "active investigation" as an investigation being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

<sup>29</sup> Section 893.055(7)(c)1.-5., F.S.

Indirect access means the person must request the information from the PDMP manager at the DOH. After an extensive process to validate and authenticate the request and the requestor, the PDMP manager or support staff provides the specific information requested.<sup>30</sup>

### **Controlled Substances**

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples include heroin and methaqualone.
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples include cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples include lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples include alprazolam, diazepam, and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples include low dosage levels of codeine, certain stimulants, and certain narcotic compounds.

### **Pain Management Clinics**

A pain management clinic is any facility that advertises pain management services or a facility where a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.<sup>31</sup> Pain management clinics must register with the DOH and meet provisions concerning staffing, sanitation, recordkeeping, and quality assurance.<sup>32</sup> A clinic is exempt from these provisions if it is:

- Licensed as a hospital, ambulatory surgical center, or mobile surgical facility;
- Staffed primarily by surgeons;

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<sup>30</sup> See s. 893.055(7)(c), F.S., and Rule 64K-1.003, F.A.C.

<sup>31</sup> “Chronic nonmalignant pain” is defined as pain unrelated to cancer which persists beyond the usual course of disease or injury that is the cause of pain for more than 90 days after surgery. See ss. 458.3265 and 459.0137, F.S.

<sup>32</sup> Sections 458.3265 and 459.0137, F.S. Chapter 458, F.S., is the Medical Practice Act, and Chapter 459, F.S., is the Osteopathic Medical Practice Act. The two sections regulating pain management clinics are substantively identical.

- Owned by a publicly-held corporation with total assets exceeding \$50 million;
- Affiliated with an accredited medical school;
- Not involved in prescribing controlled substances for the treatment of pain;
- Owned by a corporate entity exempt from federal taxation as a charitable organization;
- Wholly owned and operated by board-eligible or board-certified anesthesiologists, psychiatrists, rheumatologists, or neurologists; or
- Wholly owned and operated by a physician multispecialty practice with physicians holding credentials in pain medicine that perform interventional pain procedures routinely billed using surgical codes.

All clinics must be owned by at least one licensed physician or be licensed as a health care clinic under part X of ch. 400, F.S., to be eligible for registration as a pain management clinic. Pain management clinics must also designate a physician who is responsible for complying with all the registration and operation requirements designated in ss. 458.3265 or 459.0137, F.S. A pain management clinic may not be owned by, or have a contractual or employee relationship with, a physician who has had his or her Drug Enforcement Administration (DEA) license number revoked, has had his or her application for a license to practice using controlled substances denied by any jurisdiction, or has had any convictions or pleas for illicit drug felonies within the previous 10 years.

The DOH must conduct an annual inspection of each pain management clinic. Through the inspection, the DOH ensures the following requirements are met:

- The pain management clinic is registered with the DOH and the DOH has been notified of the designated physician;
- Every physician meets the training requirements to practice at the clinic;
- The clinic, including its grounds, buildings, furniture, appliances, and equipment is structurally sound, in good repair, clean, and free from health and safety hazards;
- Storage and handling of prescription drugs complies with ss. 499.0121 and 893.07, F.S.;
- Physicians maintain control and security of prescription blanks and other methods for prescribing controlled substances and report in writing any theft or loss of prescription blanks to the DOH within 24 hours;
- Physicians are in compliance with the requirements for counterfeit-resistant prescription blanks; and
- The designated physician has reported all adverse incidents to the DOH as set forth in s. 458.351, F.S.<sup>33</sup>

The DOH may suspend or revoke a clinic registration or impose administrative fines of up to \$5,000 per violation for any offenses against state pain management clinic provisions or related federal laws and rules. If the registration for a pain management clinic is revoked for any reason, the clinic must cease to operate immediately, remove all signs or symbols identifying the facility as a pain management clinic, and dispose of any medication on the premises. The DOH may impose an administrative fine of up to \$5,000 per day for a clinic that operates without a registration, unless exempt. No owner or operator of a pain management clinic that has had its

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<sup>33</sup> Department of Health, *Senate Bill 450 Analysis* (2016) (on file with the Senate Committee on Health Policy).

registration revoked may own or operate another pain clinic for five years after such revocation.<sup>34</sup>

Currently, if a pain clinic meets one of the statutorily approved exemptions from registering with the DOH, they are not required to register or show proof of a valid exemption from registration nor are they required to meet any of the requirements established pursuant to sections 458.3265 and 459.0137, F.S. The determination as to whether the pain clinic meets one of the exemptions is made by the owner of the pain clinic and the DOH is unaware of which approved exemption the unregistered clinic meets and, without a formal complaint being filed, does not have the authority to inquire. If a clinic no longer qualifies for an exemption they are required to register; however, because the DOH is not aware of clinics that qualify for an exemption from registration and inspection, it is also not aware when the clinic no longer meets the criteria for an exemption from registration.<sup>35</sup>

In 2010, when pain management clinic registration was first required by law, there were 921 registered pain management clinics. There were 259 clinics at the end of the 2016-2017 fiscal year. It is indeterminate how many clinics closed voluntarily because they could not meet the more stringent requirements established by law and how many were no longer registered because they self-determined they operated under one of the exemptions outlined earlier in this section.<sup>36</sup>

### III. Effect of Proposed Changes:

**Sections 1 and 9** amend ss. 409.967 and 627.42392, F.S., respectively, to restrict Medicaid managed care plans and health insurers from requiring prior authorization or step therapy or imposing any other conditions as a prerequisite to receiving MAT services. Section 627.42392, F.S., defines “health insurer” to include health insurers, managed care plans, and health maintenance organizations.

**Section 2** creates s. 456.0301, F.S., to require that, if not already required under a licensee’s individual practice act, each appropriate board must require a practitioner licensed with the DEA and authorized to prescribe controlled substances to complete a board-approved two-hour continuing education course on prescribing controlled substances when renewing his or her license.<sup>37</sup> Each licensee must submit confirmation of completing the course when applying for licensure renewal, and the DOH is prohibited from renewing the license of any practitioner who has failed to complete the course. The course may be offered in a distance learning format and be included within the number of continuing education hours required by law. The course must include:

- Information on the current standards regarding prescribing controlled substances, particularly opiates;
- Alternatives to these standards; and
- Information on the risks of opioid addiction following all stages of treatment in the management of acute pain.

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<sup>34</sup> Section 458.3265, F.S. Similar language is found in s. 459.0137, F.S. Related rules are found in Rules 64B8-9 and 64B15-14, F.A.C.

<sup>35</sup> DOH, *Senate Bill 8 Analysis* (Oct. 23, 2017) (on file with the Senate Committee on Health Policy).

<sup>36</sup> *Id.*

<sup>37</sup> Beginning on January 31, 2019.

Each board may adopt rules to implement the required course.

**Section 3** amends s. 456.072, F.S., to add violations of ss. 893.055 or 893.0551, F.S., relating to the PDMP and the public records exemption for the PDMP to the list of actions that constitute grounds for disciplinary action against a health care practitioner.

**Section 4** amends s. 456.44, F.S., to establish standards for the treatment of acute pain.

The bill defines the term “acute pain” to mean the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The applicable regulatory boards are required to adopt rules establishing guidelines for prescribing controlled substances for acute pain, including:

- Evaluating the patient;
- Creating and maintaining a treatment plan;
- Obtaining informed consent;
- Periodic review of the treatment plan;
- Consultation;
- Medical record review; and
- Compliance with controlled substances laws and regulations.

The bill specifies that failure to follow these guidelines is a practice act violation.

The bill restricts a practitioner from prescribing more than a three-day supply of an opioid listed in Schedule II when treating acute pain except that up to a seven-day supply may be prescribed if:

- The practitioner, in his or her professional judgement, believes that more than a three-day supply is medically necessary;
- The practitioner indicates “medically necessary” on the prescription; and
- The practitioner adequately documents in the patient’s medical record the acute patient’s acute condition and lack of alternative treatment options.

**Sections 5 and 6** amend ss. 458.3265 and 459.0137, F.S., respectively, to require clinics that are exempt from registration as pain management clinics to obtain a certificate of exemption from the DOH. The bill requires the DOH to adopt an application form in rule for a certificate of exemption. The form must include:

- The name or names under which the applicant does business;
- The address where the pain management clinic is located;
- The specific exemption, with supporting documentation, that the applicant is claiming; and
- Any other information deemed necessary by the DOH.

The DOH must approve or deny a certificate within 30 days, and certificates must be renewed biennially.<sup>38</sup> A certificate holder must prominently display the certificate and make it available to the DOH or board upon request. A new certificate is required for a change of address and

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<sup>38</sup> The DOH may issue initial certificates for three years in order to stagger renewal dates.

certificates are only valid for the applicant, owners, licenses, registrations, certifications, and services provided under the specific exemption claimed. A certificate holder must notify the DOH at least 60 days before any anticipated relocation, name change, or change of ownership. If a pain management clinic ceases to qualify for a certificate of exemption, the certificate holder must notify the DOH within three days and register as a pain management clinic or cease operations.

Sections 5 and 6 take effect January 1, 2019.

**Sections 7 and 8** amend ss. 465.0155 and 465.0276, F.S., to require pharmacists and dispensing practitioners to confirm a person's identity before dispensing controlled substances to that person if he or she is not personally known to the pharmacist. If the person does not have proper identification,<sup>39</sup> the dispenser must verify the validity of the prescription and the identity of the patient with the prescriber or his or her agent. This requirement does not apply in an institutional setting or long-term care facility including, but not limited, to an assisted living facility or a hospital.

**Section 8** amends several provisions in s. 465.0276, F.S., related to the dispensing of controlled substances by health care practitioners. Current law allows health care practitioners who are authorized to prescribe medicinal drugs to dispense such drugs if they are registered with their professional licensing boards; however, current law also restricts such practitioners from dispensing Schedule II or III controlled substances unless there is a specific exemption that allows them to do so. One such exemption allows practitioners to dispense up to a 14-day supply of Schedule II or III controlled substances in connection with the performance of a surgical procedure. The bill amends this exemption to require practitioners to follow the prescribing limits established in **section 4** of the bill when dispensing Schedule II controlled substances under the exemption. The bill creates a new exemption for practitioners authorized under 21 U.S.C. 823<sup>40</sup> to dispense Schedule II or III controlled substances that are approved for MAT by the FDA to their own patients for MAT of opiate addiction.

**Section 10** amends s. 893.03, F.S., to add substances to lists of controlled substances as follows:

- Dihydroetorphine, hydrocodone combination products, oripavine, remifentanyl, tapentadol, thiafentanyl, lisdexamfetamine, and dornabinol (synthetic THC) in oral solution in a drug product approved by the FDA are added to Schedule II.
- Buprenorphine,<sup>41</sup> embutramide, and perampanel are added to Schedule III.
- Alfaxalone, dexfenfluramine, dichloralphenazone, eluxadoline, eszopiclone, fospropofol, lorcaserin, modafinil, petrichloral, sibutramine, suvorexant, tramadol, zaleplon, zolpidem, and zopiclone are added to Schedule IV.

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<sup>39</sup> The bill defines "proper identification" as an identification that is issued by a state or federal government containing the person's photograph, printed name, and signature or a document considered acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B). The verification of health plan eligibility is also considered to be proper identification.

<sup>40</sup> Such practitioners include qualifying physicians (who must be licensed under state law and hold a specialty in addiction treatment or has had specified training) and nurse practitioners and physician assistants who are supervised by, or working in collaboration with, a qualifying physician.

<sup>41</sup> Buprenorphine is rescheduled from Schedule V to Schedule III.

- Not more than .5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dose, and any amount of brivaracetum, ezogabine, lacosamide, and pregabalin are added to Schedule V.

These changes conform Florida law to federal law.<sup>42</sup>

**Section 11** substantially rewords s. 893.055, F.S., creating the PDMP. Many of the provisions in existing law are reordered. The section:

- Defines the terms:
  - “Active investigation” to mean an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
  - “Administration” to mean the obtaining and giving of a single dose of controlled substance by a legally authorized person to a patient for his or her consumption.
  - “Controlled substance” to mean a controlled substance listed in Schedule II, III, IV, or V of s. 893.03, F.S., or 21 U.S.C. s. 812. Schedule Vs are added to the reporting requirements. Most states include the dispensing of Schedule V controlled substances in their PDMPs.<sup>43</sup>
  - “Dispense” to mean the transfer of possession of one or more doses of a controlled substance by a dispenser to the ultimate consumer or to his or her agent.
  - “Dispenser” to mean a dispensing health care practitioner, pharmacy or pharmacist licensed to dispense controlled substances in or into Florida.
  - “Health care practitioner,” or “practitioner,” means any practitioner licensed under chapters 458, 459, 461, 463, 464, 465, or 466, F.S.
  - “Health care regulatory board” to have the same meaning as s. 456.001(1), F.S.
  - “Law enforcement agency” to mean the Department of Law Enforcement, a sheriff’s office or police department in Florida, or a law enforcement agency of the Federal Government which enforces the laws of this state or the United States relating to controlled substances, and which its agents and officers are empowered by law to conduct criminal investigations and make arrests.
  - “Pharmacy” to include a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, or an Internet pharmacy that is licensed by the DOH under chapter 465 and that dispenses or delivers controlled substances, including controlled substances, to an individual or address in Florida.
  - “Prescriber” to mean a prescribing physician, practitioner, or other health care practitioner authorized by the laws of this state to order controlled substances.
  - “Program manager” to mean an employee of, or a person contracted by, the DOH who is designated to ensure the integrity of the PDMP in accordance with the requirements established in this section.

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<sup>42</sup> Supra note 33

<sup>43</sup> Supra note 13



- Requires the DOH to maintain an electronic system to collect and store controlled substance dispensing information and release the information as authorized in s. 893.0551, F.S.<sup>44</sup> The system must:
  - Not infringe on the legitimate prescribing and dispensing of controlled substances;
  - Be consistent with standards of the American Society for Automation in Pharmacy; and
  - Comply with the Health Insurance Portability and Accountability Act (HIPAA) and all other relevant state and federal privacy and security laws and regulations;
- Allows the DOH to collaborate with health care regulatory boards, appropriate organizations, and other state agencies to identify indicators of controlled substance abuse.
- Requires the dispenser, when dispensing a controlled substance to a patient, to report the following information to the PDMP no later than the close of business the day after the controlled substance was dispensed:
  - The name of the prescribing practitioner, his or her DEA registration number, his or her National Provider Identification (NPI), and the date of the prescription.
  - The date the prescription was filled and the method of payment.
  - The full name, address, telephone number, and date of birth of the person for whom the prescription as written.
  - The name, national drug code, quantity, and strength of the controlled substance dispensed.
  - The full name, DEA registration number, DOH pharmacy permit number, and address of the pharmacy where the controlled substance was dispensed or, if dispensed by a practitioner other than a pharmacist, the practitioner's name, address, DEA registration number, DOH license number, and NPI.
  - Whether the drug was dispensed as an initial prescription or a refill and the number of refills ordered;
  - The name of the individual picking up the controlled substance prescription and type of identification provided; and
  - Other appropriate identifying information as determined by the DOH in rule.
- Exempts all acts of administration from the reporting requirement.
- Eliminates an exemption for reporting the dispensing of controlled substances to minors under the age of 16.
- Grants direct access to the PDMP system to:
  - Prescribers and dispensers and their designees;
  - Employees of the United State Department of Veterans Affairs,<sup>45</sup> the United States Department of Defense, or the Indian Health Service who provide health care services pursuant to such employment and who have authority to prescribe controlled substances;
  - The program manager and designated support staff to administer the PDMP system. The program manager or designated support staff:
    - Must complete a level II background screening;
    - May have access to de-identified data in order to calculate performance measures; and
    - Must provide the DOH de-identified data for public health care and safety initiatives;
  - The program manager:

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<sup>44</sup> Section 893.0551, F.S., establishes the public records exemption for information in the PDMP.

<sup>45</sup> Employees of the US Department of Veterans Affairs were allowed access last year in Ch. 2017-169, Laws of Fla.

- May provide relevant information to the prescriber and dispenser when determining a pattern that indicates controlled substance abuse; and
  - May provide relevant information to law enforcement upon determining a pattern of controlled substance abuse and upon having cause to believe that a violation of controlled substance laws has occurred.
- Grants indirect access to the PDMP system to:
  - The DOH and its health care regulatory boards for investigations involving licensees authorized to prescribe or dispense controlled substances. The bill removes access for the DOH's regulatory boards;
  - The Attorney General for Medicaid fraud cases involving prescribed controlled substances;
  - A law enforcement agency during an active investigation of potential criminal activity, fraud, or theft regarding prescribed controlled substances;
  - A medical examiner when conducting an authorized investigation to determine the cause of death of an individual;<sup>46</sup>
  - An impaired practitioner consultant who is retained by the DOH to review the PDMP system information of an impaired practitioner program participant or a referral who has agreed to be evaluated or monitored through the program and has agreed in writing to the consultant's access; and
  - A patient, legal guardian, or designated health care surrogate of an incapacitated patient who submits a written and notarized request including the patient's name, address, phone number, date of birth, and a copy of a government-issued photo identification.
- Allows the DOH to enter into a reciprocal agreement or contract to share PDMP information with other states, districts, and territories if their PDMPs are compatible with Florida's.<sup>47</sup> To determine compatibility, the DOH must consider for the other states', districts', or territories' PDMP:
  - Privacy safeguards and the program's success in protecting patient privacy;
  - The persons who are authorized to view the data collected by the program. Persons and entities in other states who are comparable to those granted access to Florida's PDMP may have access to Florida's PDMP upon approval by the DOH;
  - The schedules of controlled substances monitored;
  - Data reported to the program;
  - Any implementing criteria deemed essential; and
  - The costs and benefits to Florida of sharing prescription information.
- Requires the DOH to assess continued compatibility every four years and requires any agreements with other states to contain the same restrictions as Florida's program and s. 893.0551, F.S.
- Allows the DOH to enter into agreements and contracts to establish secure connections between the PDMP and health care providers' electronic health recordkeeping system.
- Requires all prescribers and dispensers, or their designees, to consult the PDMP system before prescribing or dispensing a controlled substance. Prescribers and dispensers are exempt from this requirement if the system is not operational or temporarily cannot be accessed. Any prescriber or dispenser who does not consult the system must document the reason why he or she could not consult the system and may not prescribe or dispense more

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<sup>46</sup> This access is newly added.

<sup>47</sup> This authorization to share data is newly added.

than a three-day supply of a controlled substance. The DOH is required to issue a non-disciplinary citation pursuant to the procedure in s. 456.077, F.S., to any prescriber or dispenser who fails to consult the system. Under s. 456.077, F.S., the first citation is non-disciplinary and the second and subsequent citations are disciplinary.

- Establishes the penalty of a first-degree misdemeanor for any person who willfully and knowingly fails to report the dispensing of a controlled substance to the PDMP.
- Restricts information in the PDMP system from being released other than as specified in this section and s. 893.0551, F.S.
- Specifies that the content of the PDMP system is informational only.
- Restricts information in the PDMP system from being introduced as evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient and exempts the program manager and staff from being required to testify to any findings, recommendations, evaluations, opinions, or other actions taken in connection with the management of the system.
- Allows a prescriber or dispenser, or his or her designee, to have access to information in the PDMP system that relates to his or her patient as needed for the purpose of reviewing the patient's controlled substance prescription history. A prescriber or dispenser acting in good faith is immune from civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information in the system. The bill specifies that accessing or failing to access information in the system does not create a private cause of action against a prescriber or dispenser.
- Specifies that the PDMP must be funded through federal grants, private funding, or state funds appropriated in the General Appropriations Act. The DOH may not commit funds for the PDMP without ensuring funding is available and may not use funds provided directly or indirectly by prescription drug manufacturers.
- Allows the DOH to establish a direct support organization to raise funds for the PDMP and incorporates an automatic repeal date of October 1, 2027, that is in existing law unless saved from repeal by the Legislature.
- Requires the DOH to conduct or contract for studies to examine the feasibility of enhancing the PDMP for public health initiatives and statistical reporting. Such studies must respect the privacy of patients and be focused on:
  - Improving the quality of health care services and safety by improving the prescribing and dispensing practices for prescription drugs;
  - Taking advantage of advances in technology;
  - Reducing duplicative prescriptions and the overprescribing of prescription drugs; and
  - Reducing drug abuse.
- Requires the DOH to annually report to the Governor and the Legislature on specific performance measures for the PDMP.
- Requires the DOH to adopt rules necessary to implement this section.

**Section 12** amends s. 893.0551, F.S., to amend the public records exemption for the PDMP to conform to changes made to s. 893.055, F.S., and to conform the section to the requirement in s. 381.986, F.S., that a qualified physician must check the PDMP prior to issuing a physician certification recommending the medical use of marijuana.

**Sections 13 through 19** amend various sections of law to conform cross references to changes made in the bill.

**Section 20** provides supplemental appropriations for the 2018-2019 fiscal year as follows:

- \$27,035,360 in nonrecurring funds from the Federal Grants Trust Fund and \$15,520,000 in recurring general revenue funds are appropriated to the Department of Children and Families (DCF) for outpatient, case management, and after care services; residential treatment; MAT, including the purchase and medical use of methadone, buprenorphine, and naltrexone extended-release injectable; peer recovery support; hospital and first responder outreach; and targeted outreach to pregnant women.
  - From the \$15.5 million in recurring general revenue funds, the DCF must use \$4,720,000 to contract with a nonprofit organization for the distribution of drugs for MAT as follows:
    - \$472,000 for methadone;
    - \$1,888,000 for buprenorphine; and
    - \$2,360,000 for naltrexone extended-release injectable.
- \$6 million in recurring general revenue funds are appropriated to the Office of the State Courts Administrator (OSCA) for treatment of substance abuse disorders in individuals involved in the criminal justice system, individuals who have a high likelihood of criminal justice involvement, or who are in court-ordered, community-based drug treatment. The OSCA must contract with a non-profit entity to make available the following drugs:
  - \$600,000 for methadone;
  - \$2.4 million for buprenorphine; and
  - \$3 million for naltrexone extended-release injectable.
- \$5 million of recurring general revenue funds are appropriated to the DOH for the purchase of naloxone to be made available to EMS responders.

**Section 21** establishes an effective date of July 1, 2018, unless otherwise specified in the bill.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The bill establishes fees for the issuance of certificates of exemption for pain management clinics.

**B. Private Sector Impact:**

CS/SB 8 may cost clinics that are required to obtain a certificate of exemption from the requirement to register as a pain management clinic.

The bill may cost health care practitioners who are required to attend the additional training established in the bill.

The bill may cost patients due to the supply limits imposed for prescription of opioid medications listed in Schedule II.

The bill may increase the cost of the administrative operations of health care providers who are required to consult the PDMP prior to prescribing controlled substances and do not currently do so.

Any non-profit entities that are awarded contracts with the DCF or the OSCA to provide MAT medications, pursuant to the supplemental appropriations established in the bill, will have increased revenues.

**C. Government Sector Impact:**

The DOH will incur additional costs related to increased investigations of unlicensed pain management clinics. These costs may be offset through fees collected for initial issuance and renewal of pain management clinic exemption certificates.<sup>48</sup>

The bill provides appropriations as detailed in the Effects of Proposed Changes section above.

**VI. Technical Deficiencies:**

CS/SB 8 amends the public records exemption for the PDMP and consolidates access to the PDMP for pharmacists with other health care practitioners on lines 1669-1672. This change is a result of pharmacists being added to the definition of “health care practitioner” in s. 893.055, F.S., by the bill; however, the bill leaves out a reference to s. 893.04, F.S., when allowing access to health care practitioners that is currently incorporated into the access allowed to pharmacists by s. 893.0551(3)(e), F.S. The reference to s. 893.04, F.S., should be added to line 1671 of the bill.

**VII. Related Issues:**

None.

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<sup>48</sup> Supra note 28.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 409.967, 456.072, 456.44, 458.3265, 459.0137, 465.0155, 465.0276, 627.42392, 893.03, 893.055, 893.0551, 458.331, 459.015, 463.0055, 782.04, 893.13, 893.135, and 921.0022.

This bill creates section 456.0301 and one unnumbered section of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Health Policy on January 16, 2018.**

The CS makes several substantive changes along with numerous conforming, clarifying, and technical changes. Substantive changes include:

- Restricting Medicaid and health insurers from requiring prior authorization for MAT.
- Requiring applicable boards, rather than the DOH, to establish guidelines for prescribing controlled substances to treat acute pain.
- Requiring physicians to maintain treatment plans when prescribing Schedule II opioids for the treatment of acute pain.
- Conforming provisions relating to practitioners dispensing Schedule II and Schedule III controlled substances.
- Establishing an exception to allow physicians to dispense MAT drugs to their own patients to treat substance abuse disorders.
- Modifying the definitions of “dispense” and “dispenser” within the PDMP to ensure that out-of-state dispensers must report controlled substances dispensed into the state.
- Reestablishing indirect access to the PDMP for the DOH’s health care regulatory boards.
- Eliminating language stating that the content of the PDMP creates no obligations or legal duties for prescribers, dispensers, pharmacies, or patients.
- Providing supplemental appropriations of:
  - \$27,035,360 in nonrecurring federal grants trust funds and \$15,520,000 in recurring general revenue funds to the DCF for substance use disorder treatment services.
  - From the \$15.5 million in recurring general revenue funds, the bill earmarks \$4.7 million of recurring general revenue funds for specific MAT drugs.
  - \$6 million in recurring general revenue funds to the state courts administrator for substance abuse treatment services related to the criminal justice system. The bill requires these funds be spent on specific MAT drugs.
  - \$5 million in recurring general revenue funds to the DOH to purchase naloxone for EMS responders.

**B. Amendments:**

None.

By the Committee on Health Policy; and Senators Benacquisto,  
Perry, Stargel, Bean, and Passidomo

588-02151C-18

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1 A bill to be entitled  
2 An act relating to controlled substances; amending s.  
3 409.967, F.S.; prohibiting managed care plans and  
4 their fiscal agents or intermediaries from imposing  
5 certain requirements or conditions on recipients as a  
6 prerequisite to receiving medication-assisted  
7 treatment (MAT) services to treat substance abuse  
8 disorders; creating s. 456.0301, F.S.; authorizing  
9 certain boards to require practitioners to complete a  
10 specified board-approved continuing education course  
11 to obtain authorization to prescribe controlled  
12 substances as part of biennial license renewal;  
13 providing exceptions; providing course requirements;  
14 prohibiting the Department of Health from renewing a  
15 license of a prescriber under specified circumstances;  
16 requiring a licensee to submit confirmation of course  
17 completion; providing for each licensing board  
18 requiring such continuing education course to include  
19 hours of completion with the total hours of continuing  
20 education required in certain circumstances;  
21 authorizing rulemaking; amending s. 456.072, F.S.;

22 authorizing disciplinary action against practitioners  
23 for violating specified provisions relating to  
24 controlled substances; amending s. 456.44, F.S.;

25 defining the term "acute pain"; requiring the  
26 applicable boards to adopt rules establishing certain  
27 guidelines for prescribing controlled substances for  
28 acute pain; providing that failure of a practitioner  
29 to follow specified guidelines is grounds for

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30 disciplinary action; limiting opioid drug  
31 prescriptions for the treatment of acute pain to a  
32 specified period under certain circumstances;  
33 authorizing prescriptions for such opioids for an  
34 extended period if specified requirements are met;  
35 amending ss. 458.3265 and 459.0137, F.S.; requiring  
36 certain pain management clinic owners to register  
37 approved exemptions with the department; requiring  
38 certain clinics to obtain certificates of exemption;  
39 providing requirements for such certificates;  
40 requiring the department to adopt rules necessary to  
41 administer such exemptions; amending s. 465.0155,  
42 F.S.; providing requirements for pharmacists for the  
43 dispensing of controlled substances to persons not  
44 known to them; defining the term "proper  
45 identification"; amending s. 465.0276, F.S.;

46 prohibiting the dispensing of certain controlled  
47 substances in an amount that exceeds a 3-day supply or  
48 a medically necessary 7-day supply if certain criteria  
49 are met; providing an exception for the dispensing of  
50 certain controlled substances by a practitioner to the  
51 practitioner's own patients for the medication-  
52 assisted treatment of opiate addiction; providing  
53 requirements for practitioners for the dispensing of  
54 controlled substances to persons not known to them;  
55 defining the term "proper identification"; amending s.  
56 627.42392, F.S.; prohibiting a health insurer from  
57 imposing certain requirements or conditions on  
58 insureds as a prerequisite to receiving medication-

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59 assisted treatment (MAT) services to treat substance  
 60 abuse disorders; amending s. 893.03, F.S.; conforming  
 61 the state controlled substances schedule to the  
 62 federal controlled substances schedule; amending s.  
 63 893.055, F.S.; revising and providing definitions;  
 64 revising requirements for the prescription drug  
 65 monitoring program; authorizing rulemaking; requiring  
 66 the department to maintain an electronic system for  
 67 certain purposes which meets specified requirements;  
 68 requiring certain information to be reported to the  
 69 system by a specified time; specifying direct access  
 70 to system information; authorizing the department to  
 71 enter into reciprocal agreements or contracts to share  
 72 prescription drug monitoring information with certain  
 73 entities; providing requirements for such agreements;  
 74 authorizing the department to enter into agreements or  
 75 contracts for secure connections with practitioner  
 76 electronic systems; requiring specified persons to  
 77 consult the system for certain purposes within a  
 78 specified time; providing exceptions to the duty of  
 79 specified persons to consult the system under certain  
 80 circumstances; authorizing the department to issue  
 81 citations to specified entities for failing to meet  
 82 certain requirements; prohibiting the failure to  
 83 report the dispensing of a controlled substance when  
 84 required to do so; providing penalties; authorizing  
 85 the department to enter into agreements or contracts  
 86 for specified purposes; providing for the release of  
 87 information obtained by the system; allowing specified

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88 persons to have direct access to information for the  
 89 purpose of reviewing the controlled drug prescription  
 90 history of a patient; providing prescriber or  
 91 dispenser immunity from liability for review of  
 92 patient history when acting in good faith; providing  
 93 construction; prohibiting the department from  
 94 specified uses of funds; requiring the department to  
 95 conduct or participate in studies for specified  
 96 purposes; requiring an annual report to be submitted  
 97 to the Governor and Legislature by a specified date;  
 98 providing report requirements; authorizing the  
 99 department to establish a certain direct-support  
 100 organization for specified purposes; defining the term  
 101 "direct-support organization"; requiring a direct-  
 102 support organization to operate under written contract  
 103 with the department; providing contract requirements;  
 104 requiring the direct-support organization to obtain  
 105 written approval from the department for specified  
 106 purposes; authorizing the department to adopt certain  
 107 rules relating to resources used by the direct-support  
 108 organization; providing for an independent annual  
 109 financial audit by the direct-support organization;  
 110 providing that copies of such audit be provided to  
 111 specified entities; providing for future repeal of  
 112 provisions relating to the direct-support  
 113 organization; requiring the department to adopt rules  
 114 to implement the system; amending s. 893.0551, F.S.;  
 115 revising provisions concerning the release of  
 116 information held by the prescription drug monitoring

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117 program; amending ss. 458.331, 459.015, 463.0055,  
 118 782.04, 893.13, 893.135, and 921.0022, F.S.;  
 119 correcting cross-references; conforming provisions to  
 120 changes made by the act; providing appropriations;  
 121 providing effective dates.

122  
 123 Be It Enacted by the Legislature of the State of Florida:

124  
 125 Section 1. Paragraph (c) of subsection (2) of section  
 126 409.967, Florida Statutes, is amended to read:

127 409.967 Managed care plan accountability.—

128 (2) The agency shall establish such contract requirements  
 129 as are necessary for the operation of the statewide managed care  
 130 program. In addition to any other provisions the agency may deem  
 131 necessary, the contract must require:

132 (c) Access.—

133 1. The agency shall establish specific standards for the  
 134 number, type, and regional distribution of providers in managed  
 135 care plan networks to ensure access to care for both adults and  
 136 children. Each plan must maintain a regionwide network of  
 137 providers in sufficient numbers to meet the access standards for  
 138 specific medical services for all recipients enrolled in the  
 139 plan. The exclusive use of mail-order pharmacies may not be  
 140 sufficient to meet network access standards. Consistent with the  
 141 standards established by the agency, provider networks may  
 142 include providers located outside the region. A plan may  
 143 contract with a new hospital facility before the date the  
 144 hospital becomes operational if the hospital has commenced  
 145 construction, will be licensed and operational by January 1,

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146 2013, and a final order has issued in any civil or  
 147 administrative challenge. Each plan shall establish and maintain  
 148 an accurate and complete electronic database of contracted  
 149 providers, including information about licensure or  
 150 registration, locations and hours of operation, specialty  
 151 credentials and other certifications, specific performance  
 152 indicators, and such other information as the agency deems  
 153 necessary. The database must be available online to both the  
 154 agency and the public and have the capability to compare the  
 155 availability of providers to network adequacy standards and to  
 156 accept and display feedback from each provider's patients. Each  
 157 plan shall submit quarterly reports to the agency identifying  
 158 the number of enrollees assigned to each primary care provider.

159 2. Each managed care plan must publish any prescribed drug  
 160 formulary or preferred drug list on the plan's website in a  
 161 manner that is accessible to and searchable by enrollees and  
 162 providers. The plan must update the list within 24 hours after  
 163 making a change. Each plan must ensure that the prior  
 164 authorization process for prescribed drugs is readily accessible  
 165 to health care providers, including posting appropriate contact  
 166 information on its website and providing timely responses to  
 167 providers. For Medicaid recipients diagnosed with hemophilia who  
 168 have been prescribed anti-hemophilic-factor replacement  
 169 products, the agency shall provide for those products and  
 170 hemophilia overlay services through the agency's hemophilia  
 171 disease management program.

172 3. Managed care plans, and their fiscal agents or  
 173 intermediaries, must accept prior authorization requests for any  
 174 service electronically.

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175 4. Managed care plans, and their fiscal agents and  
 176 intermediaries, may not implement, manage, or require a prior  
 177 authorization process or step therapy procedures and may not  
 178 impose any other conditions on recipients as a prerequisite to  
 179 receiving medication-assisted treatment (MAT) services, as  
 180 defined in s. 397.311, to treat substance abuse disorders.

181 5. Managed care plans serving children in the care and  
 182 custody of the Department of Children and Families must maintain  
 183 complete medical, dental, and behavioral health encounter  
 184 information and participate in making such information available  
 185 to the department or the applicable contracted community-based  
 186 care lead agency for use in providing comprehensive and  
 187 coordinated case management. The agency and the department shall  
 188 establish an interagency agreement to provide guidance for the  
 189 format, confidentiality, recipient, scope, and method of  
 190 information to be made available and the deadlines for  
 191 submission of the data. The scope of information available to  
 192 the department shall be the data that managed care plans are  
 193 required to submit to the agency. The agency shall determine the  
 194 plan's compliance with standards for access to medical, dental,  
 195 and behavioral health services; the use of medications; and  
 196 followup on all medically necessary services recommended as a  
 197 result of early and periodic screening, diagnosis, and  
 198 treatment.

199 Section 2. Section 456.0301, Florida Statutes, is created  
 200 to read:

201 456.0301 Requirement for instruction on controlled  
 202 substance prescribing.-

203 (1) (a) If not already required by the licensee's practice

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204 act, the appropriate board shall require each person registered  
 205 with the United States Drug Enforcement Administration and  
 206 authorized to prescribe controlled substances pursuant to 21  
 207 U.S.C. s. 822 to complete a board-approved 2-hour continuing  
 208 education course on prescribing controlled substances as part of  
 209 biennial license renewal. The course must include information on  
 210 the current standards for prescribing controlled substances,  
 211 particularly opiates; alternatives to these standards; and  
 212 information on the risks of opioid addiction following all  
 213 stages of treatment in the management of acute pain. The course  
 214 may be offered in a distance learning format and must be  
 215 included within the number of continuing education hours  
 216 required by law. The department may not renew the license of any  
 217 prescriber registered with the United States Drug Enforcement  
 218 Administration to prescribe controlled substances who has failed  
 219 to complete the course. When required by this paragraph, the  
 220 course must be completed by January 31, 2019, and at each  
 221 subsequent renewal.

222 (b) Each such licensee shall submit confirmation of having  
 223 completed such course when applying for biennial license  
 224 renewal.

225 (2) Each board may adopt rules to administer this section.

226 Section 3. Paragraph (gg) of subsection (1) of section  
 227 456.072, Florida Statutes, is amended to read:

228 456.072 Grounds for discipline; penalties; enforcement.-

229 (1) The following acts shall constitute grounds for which  
 230 the disciplinary actions specified in subsection (2) may be  
 231 taken:

232 (gg) Engaging in a pattern of practice when prescribing

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233 medicinal drugs or controlled substances which demonstrates a  
 234 lack of reasonable skill or safety to patients, a violation of  
 235 ~~any provision of this chapter or ss. 893.055 and 893.0551~~, a  
 236 violation of the applicable practice act, or a violation of any  
 237 rules adopted under this chapter or the applicable practice act  
 238 of the prescribing practitioner. Notwithstanding s. 456.073(13),  
 239 the department may initiate an investigation and establish such  
 240 a pattern from billing records, data, or any other information  
 241 obtained by the department.

242 Section 4. Paragraphs (a) through (g) of subsection (1) of  
 243 section 456.44, Florida Statutes, are redesignated as paragraphs  
 244 (b) through (h), respectively, a new paragraph (a) is added to  
 245 that subsection, subsection (3) is amended, and subsections (4)  
 246 and (5) are added to that section, to read:

247 456.44 Controlled substance prescribing.—

248 (1) DEFINITIONS.—As used in this section, the term:

249 (a) “Acute pain” means the normal, predicted,  
 250 physiological, and time-limited response to an adverse chemical,  
 251 thermal, or mechanical stimulus associated with surgery, trauma,  
 252 or acute illness.

253 (3) STANDARDS OF PRACTICE FOR TREATMENT OF CHRONIC  
 254 NONMALIGNANT PAIN.—The standards of practice in this section do  
 255 not supersede the level of care, skill, and treatment recognized  
 256 in general law related to health care licensure.

257 (a) A complete medical history and a physical examination  
 258 must be conducted before beginning any treatment and must be  
 259 documented in the medical record. The exact components of the  
 260 physical examination shall be left to the judgment of the  
 261 registrant who is expected to perform a physical examination

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262 proportionate to the diagnosis that justifies a treatment. The  
 263 medical record must, at a minimum, document the nature and  
 264 intensity of the pain, current and past treatments for pain,  
 265 underlying or coexisting diseases or conditions, the effect of  
 266 the pain on physical and psychological function, a review of  
 267 previous medical records, previous diagnostic studies, and  
 268 history of alcohol and substance abuse. The medical record shall  
 269 also document the presence of one or more recognized medical  
 270 indications for the use of a controlled substance. Each  
 271 registrant must develop a written plan for assessing each  
 272 patient’s risk of aberrant drug-related behavior, which may  
 273 include patient drug testing. Registrants must assess each  
 274 patient’s risk for aberrant drug-related behavior and monitor  
 275 that risk on an ongoing basis in accordance with the plan.

276 (b) Each registrant must develop a written individualized  
 277 treatment plan for each patient. The treatment plan shall state  
 278 objectives that will be used to determine treatment success,  
 279 such as pain relief and improved physical and psychosocial  
 280 function, and shall indicate if any further diagnostic  
 281 evaluations or other treatments are planned. After treatment  
 282 begins, the registrant shall adjust drug therapy to the  
 283 individual medical needs of each patient. Other treatment  
 284 modalities, including a rehabilitation program, shall be  
 285 considered depending on the etiology of the pain and the extent  
 286 to which the pain is associated with physical and psychosocial  
 287 impairment. The interdisciplinary nature of the treatment plan  
 288 shall be documented.

289 (c) The registrant shall discuss the risks and benefits of  
 290 the use of controlled substances, including the risks of abuse

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291 and addiction, as well as physical dependence and its  
 292 consequences, with the patient, persons designated by the  
 293 patient, or the patient's surrogate or guardian if the patient  
 294 is incompetent. The registrant shall use a written controlled  
 295 substance agreement between the registrant and the patient  
 296 outlining the patient's responsibilities, including, but not  
 297 limited to:

- 298 1. Number and frequency of controlled substance  
 299 prescriptions and refills.
- 300 2. Patient compliance and reasons for which drug therapy  
 301 may be discontinued, such as a violation of the agreement.
- 302 3. An agreement that controlled substances for the  
 303 treatment of chronic nonmalignant pain shall be prescribed by a  
 304 single treating registrant unless otherwise authorized by the  
 305 treating registrant and documented in the medical record.
- 306 (d) The patient shall be seen by the registrant at regular  
 307 intervals, not to exceed 3 months, to assess the efficacy of  
 308 treatment, ensure that controlled substance therapy remains  
 309 indicated, evaluate the patient's progress toward treatment  
 310 objectives, consider adverse drug effects, and review the  
 311 etiology of the pain. Continuation or modification of therapy  
 312 shall depend on the registrant's evaluation of the patient's  
 313 progress. If treatment goals are not being achieved, despite  
 314 medication adjustments, the registrant shall reevaluate the  
 315 appropriateness of continued treatment. The registrant shall  
 316 monitor patient compliance in medication usage, related  
 317 treatment plans, controlled substance agreements, and  
 318 indications of substance abuse or diversion at a minimum of 3-  
 319 month intervals.

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320 (e) The registrant shall refer the patient as necessary for  
 321 additional evaluation and treatment in order to achieve  
 322 treatment objectives. Special attention shall be given to those  
 323 patients who are at risk for misusing their medications and  
 324 those whose living arrangements pose a risk for medication  
 325 misuse or diversion. The management of pain in patients with a  
 326 history of substance abuse or with a comorbid psychiatric  
 327 disorder requires extra care, monitoring, and documentation and  
 328 requires consultation with or referral to an addiction medicine  
 329 specialist or a psychiatrist.

330 (f) A registrant must maintain accurate, current, and  
 331 complete records that are accessible and readily available for  
 332 review and comply with the requirements of this section, the  
 333 applicable practice act, and applicable board rules. The medical  
 334 records must include, but are not limited to:

- 335 1. The complete medical history and a physical examination,  
 336 including history of drug abuse or dependence.
- 337 2. Diagnostic, therapeutic, and laboratory results.
- 338 3. Evaluations and consultations.
- 339 4. Treatment objectives.
- 340 5. Discussion of risks and benefits.
- 341 6. Treatments.
- 342 7. Medications, including date, type, dosage, and quantity  
 343 prescribed.
- 344 8. Instructions and agreements.
- 345 9. Periodic reviews.
- 346 10. Results of any drug testing.
- 347 11. A photocopy of the patient's government-issued photo  
 348 identification.

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349 12. If a written prescription for a controlled substance is  
350 given to the patient, a duplicate of the prescription.

351 13. The registrant's full name presented in a legible  
352 manner.

353 (g) A registrant shall immediately refer patients with  
354 signs or symptoms of substance abuse to a board-certified pain  
355 management physician, an addiction medicine specialist, or a  
356 mental health addiction facility as it pertains to drug abuse or  
357 addiction unless the registrant is a physician who is board-  
358 certified or board-eligible in pain management. Throughout the  
359 period of time before receiving the consultant's report, a  
360 prescribing registrant shall clearly and completely document  
361 medical justification for continued treatment with controlled  
362 substances and those steps taken to ensure medically appropriate  
363 use of controlled substances by the patient. Upon receipt of the  
364 consultant's written report, the prescribing registrant shall  
365 incorporate the consultant's recommendations for continuing,  
366 modifying, or discontinuing controlled substance therapy. The  
367 resulting changes in treatment shall be specifically documented  
368 in the patient's medical record. Evidence or behavioral  
369 indications of diversion shall be followed by discontinuation of  
370 controlled substance therapy, and the patient shall be  
371 discharged, and all results of testing and actions taken by the  
372 registrant shall be documented in the patient's medical record.

373  
374 This subsection does not apply to a board-eligible or board-  
375 certified anesthesiologist, physiatrist, rheumatologist, or  
376 neurologist, or to a board-certified physician who has surgical  
377 privileges at a hospital or ambulatory surgery center and

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378 primarily provides surgical services. This subsection does not  
379 apply to a board-eligible or board-certified medical specialist  
380 who has also completed a fellowship in pain medicine approved by  
381 the Accreditation Council for Graduate Medical Education or the  
382 American Osteopathic Association, or who is board eligible or  
383 board certified in pain medicine by the American Board of Pain  
384 Medicine, the American Board of Interventional Pain Physicians,  
385 the American Association of Physician Specialists, or a board  
386 approved by the American Board of Medical Specialties or the  
387 American Osteopathic Association and performs interventional  
388 pain procedures of the type routinely billed using surgical  
389 codes. This subsection does not apply to a registrant who  
390 prescribes medically necessary controlled substances for a  
391 patient during an inpatient stay in a hospital licensed under  
392 chapter 395.

393 (4) STANDARDS OF PRACTICE FOR TREATMENT OF ACUTE PAIN.-The  
394 applicable boards shall adopt rules establishing guidelines for  
395 prescribing controlled substances for acute pain, including  
396 evaluation of the patient, creation and maintenance of a  
397 treatment plan, obtaining informed consent and agreement for  
398 treatment, periodic review of the treatment plan, consultation,  
399 medical record review, and compliance with controlled substance  
400 laws and regulations. Failure of a prescriber to follow such  
401 guidelines constitutes grounds for disciplinary action pursuant  
402 to s. 456.072(1)(gg), punishable as provided in s. 456.072(2).

403 (5) PRESCRIPTION SUPPLY.-

404 (a) Except as provided in paragraph (b), a prescription for  
405 an opioid drug listed as a Schedule II controlled substance in  
406 s. 893.03 or 21 U.S.C. s. 812, for the treatment of acute pain

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407 may not exceed a 3-day supply.

408 (b) Up to a 7-day supply of an opioid described in  
409 paragraph (a) may be prescribed if:

410 1. The practitioner, in his or her professional judgment,  
411 believes that more than a 3-day supply of such an opioid is  
412 medically necessary to treat the patient's pain as an acute  
413 medical condition.

414 2. The practitioner indicates "MEDICALLY NECESSARY" on the  
415 prescription.

416 3. The prescriber adequately documents in the patient's  
417 medical records the acute medical condition and lack of  
418 alternative treatment options that justify deviation from the 3-  
419 day supply limit established in this subsection.

420 Section 5. Effective January 1, 2019, subsections (2)  
421 through (5) of section 458.3265, Florida Statutes, are  
422 renumbered as subsections (3) through (6), respectively,  
423 paragraphs (a) and (g) of subsection (1), paragraph (a) of  
424 present subsection (2), paragraph (a) of present subsection (3)  
425 and paragraph (a) of present subsection (4) of that section, are  
426 amended, and a new subsection (2) is added to that section, to  
427 read:

428 458.3265 Pain-management clinics.—

429 (1) REGISTRATION.—

430 (a)1. As used in this section, the term:

431 a. "Board eligible" means successful completion of an  
432 anesthesia, physical medicine and rehabilitation, rheumatology,  
433 or neurology residency program approved by the Accreditation  
434 Council for Graduate Medical Education or the American  
435 Osteopathic Association for a period of 6 years from successful

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436 completion of such residency program.

437 b. "Chronic nonmalignant pain" means pain unrelated to  
438 cancer which persists beyond the usual course of disease or the  
439 injury that is the cause of the pain or more than 90 days after  
440 surgery.

441 c. "Pain-management clinic" or "clinic" means any publicly  
442 or privately owned facility:

443 (I) That advertises in any medium for any type of pain-  
444 management services; or

445 (II) Where in any month a majority of patients are  
446 prescribed opioids, benzodiazepines, barbiturates, or  
447 carisoprodol for the treatment of chronic nonmalignant pain.

448 2. Each pain-management clinic must register with the  
449 department or hold a valid certificate of exemption pursuant to  
450 subsection (2). ~~unless:~~

451 3. The following clinics are exempt from the registration  
452 requirement of paragraphs (c)-(m), and must apply to the  
453 department for a certificate of exemption:

454 a. A ~~The~~ clinic ~~is~~ licensed as a facility pursuant to  
455 chapter 395;

456 b. A clinic in which the majority of the physicians who  
457 provide services in the clinic primarily provide surgical  
458 services;

459 c. A ~~The~~ clinic ~~is~~ owned by a publicly held corporation  
460 whose shares are traded on a national exchange or on the over-  
461 the-counter market and whose total assets at the end of the  
462 corporation's most recent fiscal quarter exceeded \$50 million;

463 d. A ~~The~~ clinic ~~is~~ affiliated with an accredited medical  
464 school at which training is provided for medical students,

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465 residents, or fellows;

466 e. ~~A~~ The clinic that does not prescribe controlled  
467 substances for the treatment of pain;

468 f. ~~A~~ The clinic is owned by a corporate entity exempt from  
469 federal taxation under 26 U.S.C. s. 501(c)(3);

470 g. ~~A~~ The clinic is wholly owned and operated by one or more  
471 board-eligible or board-certified anesthesiologists,  
472 physiatrists, rheumatologists, or neurologists; or

473 h. ~~A~~ The clinic is wholly owned and operated by a physician  
474 multispecialty practice where one or more board-eligible or  
475 board-certified medical specialists, who have also completed  
476 fellowships in pain medicine approved by the Accreditation  
477 Council for Graduate Medical Education or who are also board-  
478 certified in pain medicine by the American Board of Pain  
479 Medicine or a board approved by the American Board of Medical  
480 Specialties, the American Association of Physician Specialists,  
481 or the American Osteopathic Association, perform interventional  
482 pain procedures of the type routinely billed using surgical  
483 codes.

484 (g) The department may revoke the clinic's certificate of  
485 registration and prohibit all physicians associated with that  
486 pain-management clinic from practicing at that clinic location  
487 based upon an annual inspection and evaluation of the factors  
488 described in subsection ~~(4)(3)~~.

489 (2) CERTIFICATE OF EXEMPTION.-

490 (a) A pain management clinic claiming an exemption from the  
491 registration requirements of subsection (1) must apply for a  
492 certificate of exemption on a form adopted in rule by the  
493 department. The form must require the applicant to provide:

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494 1. The name or names under which the applicant does  
495 business.

496 2. The address at which the pain management clinic is  
497 located.

498 3. The specific exemption the applicant is claiming with  
499 supporting documentation.

500 4. Any other information deemed necessary by the  
501 department.

502 (b) The department must approve or deny the application  
503 within 30 days after the receipt of a complete application.

504 (c) The certificate of exemption must be renewed  
505 biennially, except that the department may issue the initial  
506 certificates of exemption for up to 3 years in order to stagger  
507 renewal dates.

508 (d) A certificateholder must prominently display the  
509 certificate of exemption and make it available to the department  
510 or the board upon request.

511 (e) A new certificate of exemption is required for a change  
512 of address and is not transferable. A certificate of exemption  
513 is valid only for the applicant, qualifying owners, licenses,  
514 registrations, certifications, and services provided under a  
515 specific statutory exemption and is valid only to the specific  
516 exemption claimed and granted.

517 (f) A certificateholder must notify the department at least  
518 60 days before any anticipated relocation or name change of the  
519 pain management clinic or a change of ownership.

520 (g) If a pain management clinic no longer qualifies for a  
521 certificate of exemption, the certificateholder must notify the  
522 department within 3 days after becoming aware that the clinic no

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523 longer qualifies for a certificate of exemption and register as  
 524 a pain management clinic under subsection (1) or cease  
 525 operations.

526 ~~(3)(2)~~ PHYSICIAN RESPONSIBILITIES.—These responsibilities  
 527 apply to any physician who provides professional services in a  
 528 pain-management clinic that is required to be registered in  
 529 subsection (1).

530 (a) A physician may not practice medicine in a pain-  
 531 management clinic, as described in subsection ~~(5)(4)~~, if the  
 532 pain-management clinic is not registered with the department as  
 533 required by this section. Any physician who qualifies to  
 534 practice medicine in a pain-management clinic pursuant to rules  
 535 adopted by the Board of Medicine as of July 1, 2012, may  
 536 continue to practice medicine in a pain-management clinic as  
 537 long as the physician continues to meet the qualifications set  
 538 forth in the board rules. A physician who violates this  
 539 paragraph is subject to disciplinary action by his or her  
 540 appropriate medical regulatory board.

541 ~~(4)(3)~~ INSPECTION.—

542 (a) The department shall inspect the pain-management clinic  
 543 annually, including a review of the patient records, to ensure  
 544 that it complies with this section and the rules of the Board of  
 545 Medicine adopted pursuant to subsection ~~(5)(4)~~ unless the clinic  
 546 is accredited by a nationally recognized accrediting agency  
 547 approved by the Board of Medicine.

548 ~~(5)(4)~~ RULEMAKING.—

549 (a) The department shall adopt rules necessary to  
 550 administer the registration, exemption, and inspection of pain-  
 551 management clinics which establish the specific requirements,

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552 procedures, forms, and fees.

553 Section 6. Effective January 1, 2019, subsections (2)  
 554 through (5) of section 459.0137, Florida Statutes, are  
 555 renumbered as subsections (3) through (6), respectively,  
 556 paragraphs (a) and (g) of subsection (1), paragraph (a) of  
 557 present subsection (2), paragraph (a) of present subsection (3)  
 558 and paragraph (a) of present subsection (4) of that section, are  
 559 amended, and a new subsection (2) is added to that section, to  
 560 read:

561 459.0137 Pain-management clinics.—

562 (1) REGISTRATION.—

563 (a)1. As used in this section, the term:

564 a. "Board eligible" means successful completion of an  
 565 anesthesia, physical medicine and rehabilitation, rheumatology,  
 566 or neurology residency program approved by the Accreditation  
 567 Council for Graduate Medical Education or the American  
 568 Osteopathic Association for a period of 6 years from successful  
 569 completion of such residency program.

570 b. "Chronic nonmalignant pain" means pain unrelated to  
 571 cancer which persists beyond the usual course of disease or the  
 572 injury that is the cause of the pain or more than 90 days after  
 573 surgery.

574 c. "Pain-management clinic" or "clinic" means any publicly  
 575 or privately owned facility:

576 (I) That advertises in any medium for any type of pain-  
 577 management services; or

578 (II) Where in any month a majority of patients are  
 579 prescribed opioids, benzodiazepines, barbiturates, or  
 580 carisoprodol for the treatment of chronic nonmalignant pain.

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581 2. Each pain-management clinic must register with the  
 582 department or hold a valid certificate of exemption pursuant to  
 583 subsection (2). unless:

584 3. The following clinics are exempt from the registration  
 585 requirement of paragraphs (c)-(m), and must apply to the  
 586 department for a certificate of exemption:

587 a. A ~~The~~ clinic ~~is~~ licensed as a facility pursuant to  
 588 chapter 395;

589 b. A clinic in which the majority of the physicians who  
 590 provide services in the clinic primarily provide surgical  
 591 services;

592 c. A ~~The~~ clinic ~~is~~ owned by a publicly held corporation  
 593 whose shares are traded on a national exchange or on the over-  
 594 the-counter market and whose total assets at the end of the  
 595 corporation's most recent fiscal quarter exceeded \$50 million;

596 d. A ~~The~~ clinic ~~is~~ affiliated with an accredited medical  
 597 school at which training is provided for medical students,  
 598 residents, or fellows;

599 e. A ~~The~~ clinic that does not prescribe controlled  
 600 substances for the treatment of pain;

601 f. A ~~The~~ clinic ~~is~~ owned by a corporate entity exempt from  
 602 federal taxation under 26 U.S.C. s. 501(c) (3);

603 g. A ~~The~~ clinic ~~is~~ wholly owned and operated by one or more  
 604 board-eligible or board-certified anesthesiologists,  
 605 physiatrists, rheumatologists, or neurologists; or

606 h. A ~~The~~ clinic ~~is~~ wholly owned and operated by a physician  
 607 multispecialty practice where one or more board-eligible or  
 608 board-certified medical specialists, who have also completed  
 609 fellowships in pain medicine approved by the Accreditation

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610 Council for Graduate Medical Education or the American  
 611 Osteopathic Association or who are also board-certified in pain  
 612 medicine by the American Board of Pain Medicine or a board  
 613 approved by the American Board of Medical Specialties, the  
 614 American Association of Physician Specialists, or the American  
 615 Osteopathic Association, perform interventional pain procedures  
 616 of the type routinely billed using surgical codes.

617 (g) The department may revoke the clinic's certificate of  
 618 registration and prohibit all physicians associated with that  
 619 pain-management clinic from practicing at that clinic location  
 620 based upon an annual inspection and evaluation of the factors  
 621 described in subsection (4)(3).

622 (2) CERTIFICATE OF EXEMPTION.-

623 (a) A pain management clinic claiming an exemption from the  
 624 registration requirements of subsection (1) must apply for a  
 625 certificate of exemption on a form adopted in rule by the  
 626 department. The form shall require the applicant to provide:

627 1. The name or names under which the applicant does  
 628 business.

629 2. The address at which the pain management clinic is  
 630 located.

631 3. The specific exemption the applicant is claiming with  
 632 supporting documentation.

633 4. Any other information deemed necessary by the  
 634 department.

635 (b) Within 30 days after the receipt of a complete  
 636 application, the department must approve or deny the  
 637 application.

638 (c) The certificate of exemption must be renewed

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639 biennially, except that the department may issue the initial  
 640 certificates of exemption for up to 3 years in order to stagger  
 641 renewal dates.

642 (d) A certificateholder must prominently display the  
 643 certificate of exemption and make it available to the department  
 644 or the board upon request.

645 (e) A new certificate of exemption is required for a change  
 646 of address and is not transferable. A certificate of exemption  
 647 is valid only for the applicant, qualifying owners, licenses,  
 648 registrations, certifications, and services provided under a  
 649 specific statutory exemption and is valid only to the specific  
 650 exemption claimed and granted.

651 (f) A certificateholder must notify the department at least  
 652 60 days before any anticipated relocation or name change of the  
 653 pain management clinic or a change of ownership.

654 (g) If a pain management clinic no longer qualifies for a  
 655 certificate of exemption, the certificateholder must notify the  
 656 department within 3 days after becoming aware that the clinic no  
 657 longer qualifies for a certificate of exemption and register as  
 658 a pain management clinic under subsection (1) or cease  
 659 operations.

660 (3)-(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities  
 661 apply to any osteopathic physician who provides professional  
 662 services in a pain-management clinic that is required to be  
 663 registered in subsection (1).

664 (a) An osteopathic physician may not practice medicine in a  
 665 pain-management clinic, as described in subsection (5)-(4), if  
 666 the pain-management clinic is not registered with the department  
 667 as required by this section. Any physician who qualifies to

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668 practice medicine in a pain-management clinic pursuant to rules  
 669 adopted by the Board of Osteopathic Medicine as of July 1, 2012,  
 670 may continue to practice medicine in a pain-management clinic as  
 671 long as the physician continues to meet the qualifications set  
 672 forth in the board rules. An osteopathic physician who violates  
 673 this paragraph is subject to disciplinary action by his or her  
 674 appropriate medical regulatory board.

675 (4)-(3) INSPECTION.—

676 (a) The department shall inspect the pain-management clinic  
 677 annually, including a review of the patient records, to ensure  
 678 that it complies with this section and the rules of the Board of  
 679 Osteopathic Medicine adopted pursuant to subsection (5)-(4)  
 680 unless the clinic is accredited by a nationally recognized  
 681 accrediting agency approved by the Board of Osteopathic  
 682 Medicine.

683 (5)-(4) RULEMAKING.—

684 (a) The department shall adopt rules necessary to  
 685 administer the registration, exemption, and inspection of pain-  
 686 management clinics which establish the specific requirements,  
 687 procedures, forms, and fees.

688 Section 7. Section 465.0155, Florida Statutes, is amended  
 689 to read:

690 465.0155 Standards of practice.—

691 (1) Consistent with the provisions of this act, the board  
 692 shall adopt by rule standards of practice relating to the  
 693 practice of pharmacy which shall be binding on every state  
 694 agency and shall be applied by such agencies when enforcing or  
 695 implementing any authority granted by any applicable statute,  
 696 rule, or regulation, whether federal or state.

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697 (2) (a) Before dispensing a controlled substance to a person  
 698 not known to the pharmacist, the pharmacist must require the  
 699 person purchasing, receiving, or otherwise acquiring the  
 700 controlled substance to present valid photographic  
 701 identification or other verification of his or her identity. If  
 702 the person does not have proper identification, the pharmacist  
 703 may verify the validity of the prescription and the identity of  
 704 the patient with the prescriber or his or her authorized agent.  
 705 Verification of health plan eligibility through a real-time  
 706 inquiry or adjudication system is considered to be proper  
 707 identification.

708 (b) This subsection does not apply in an institutional  
 709 setting or to a long-term care facility, including, but not  
 710 limited to, an assisted living facility or a hospital to which  
 711 patients are admitted.

712 (c) As used in this subsection, the term "proper  
 713 identification" means an identification that is issued by a  
 714 state or the Federal Government containing the person's  
 715 photograph, printed name, and signature or a document considered  
 716 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

717 Section 8. Paragraph (b) of subsection (1) of section  
 718 465.0276, Florida Statutes, is amended, and paragraph (d) is  
 719 added to subsection (2) of that section, to read:

720 465.0276 Dispensing practitioner.—

721 (1)

722 (b) A practitioner registered under this section may not  
 723 dispense a controlled substance listed in Schedule II or  
 724 Schedule III as provided in s. 893.03. This paragraph does not  
 725 apply to:

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726 1. The dispensing of complimentary packages of medicinal  
 727 drugs which are labeled as a drug sample or complimentary drug  
 728 as defined in s. 499.028 to the practitioner's own patients in  
 729 the regular course of her or his practice without the payment of  
 730 a fee or remuneration of any kind, whether direct or indirect,  
 731 as provided in subsection (4).

732 2. The dispensing of controlled substances in the health  
 733 care system of the Department of Corrections.

734 3. The dispensing of a controlled substance listed in  
 735 Schedule II or Schedule III in connection with the performance  
 736 of a surgical procedure.

737 a. For a controlled substance listed in Schedule II, the  
 738 amount dispensed pursuant to this subparagraph may not exceed a  
 739 3-day supply unless the criteria in s. 456.44(5)(b) are met, in  
 740 which case the amount dispensed may not exceed a 7-day supply.

741 b. For a controlled substance listed in Schedule III, the  
 742 amount dispensed pursuant to ~~this~~ ~~the~~ subparagraph may not  
 743 exceed a 14-day supply.

744 c. The exception in this subparagraph ~~exception~~ does not  
 745 allow for the dispensing of a controlled substance listed in  
 746 Schedule II or Schedule III more than 14 days after the  
 747 performance of the surgical procedure.

748 d. For purposes of this subparagraph, the term "surgical  
 749 procedure" means any procedure in any setting which involves, or  
 750 reasonably should involve:

751 (I)a- Perioperative medication and sedation that allows the  
 752 patient to tolerate unpleasant procedures while maintaining  
 753 adequate cardiorespiratory function and the ability to respond  
 754 purposefully to verbal or tactile stimulation and makes intra-

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755 and postoperative monitoring necessary; or

756 ~~(II)B-~~ The use of general anesthesia or major conduction  
757 anesthesia and preoperative sedation.

758 4. The dispensing of a controlled substance listed in  
759 Schedule II or Schedule III pursuant to an approved clinical  
760 trial. For purposes of this subparagraph, the term "approved  
761 clinical trial" means a clinical research study or clinical  
762 investigation that, in whole or in part, is state or federally  
763 funded or is conducted under an investigational new drug  
764 application that is reviewed by the United States Food and Drug  
765 Administration.

766 5. The dispensing of methadone in a facility licensed under  
767 s. 397.427 where medication-assisted treatment for opiate  
768 addiction is provided.

769 6. The dispensing of a controlled substance listed in  
770 Schedule II or Schedule III to a patient of a facility licensed  
771 under part IV of chapter 400.

772 7. The dispensing of controlled substances listed in  
773 Schedule II or Schedule III which have been approved by the  
774 United States Food and Drug Administration for the purpose of  
775 treating opiate addiction including, but not limited to,  
776 buprenorphine and buprenorphine combination products, by a  
777 practitioner authorized under 21 U.S.C. 823, as amended, to the  
778 practitioner's own patients for the medication-assisted  
779 treatment of opiate addiction.

780 (2) A practitioner who dispenses medicinal drugs for human  
781 consumption for fee or remuneration of any kind, whether direct  
782 or indirect, must:

783 (d)1. Before dispensing a controlled substance to a person

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784 not known to the dispenser, require the person purchasing,  
785 receiving, or otherwise acquiring the controlled substance to  
786 present valid photographic identification or other verification  
787 of his or her identity. If the person does not have proper  
788 identification, the dispenser may verify the validity of the  
789 prescription and the identity of the patient with the prescriber  
790 or his or her authorized agent. Verification of health plan  
791 eligibility through a real-time inquiry or adjudication system  
792 is considered to be proper identification.

793 2. This paragraph does not apply in an institutional  
794 setting or to a long-term care facility, including, but not  
795 limited to, an assisted living facility or a hospital to which  
796 patients are admitted.

797 3. As used in this paragraph, the term "proper  
798 identification" means an identification that is issued by a  
799 state or the Federal Government containing the person's  
800 photograph, printed name, and signature or a document considered  
801 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

802 Section 9. Subsection (5) is added to section 627.42392,  
803 Florida Statutes, to read:

804 627.42392 Prior authorization.—

805 (5) A health insurer may not require a prior authorization  
806 process or step therapy procedure or impose any other conditions  
807 on insureds as a prerequisite to receiving medication-assisted  
808 treatment (MAT) services, as defined in s. 397.311, to treat  
809 substance abuse disorders.

810 Section 10. Subsections (2), (3), (4), and (5) of section  
811 893.03, Florida Statutes, are amended to read:

812 893.03 Standards and schedules.—The substances enumerated

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813 in this section are controlled by this chapter. The controlled  
 814 substances listed or to be listed in Schedules I, II, III, IV,  
 815 and V are included by whatever official, common, usual,  
 816 chemical, trade name, or class designated. The provisions of  
 817 this section shall not be construed to include within any of the  
 818 schedules contained in this section any excluded drugs listed  
 819 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 820 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 821 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 822 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 823 Anabolic Steroid Products."

824 (2) SCHEDULE II.—A substance in Schedule II has a high  
 825 potential for abuse and has a currently accepted but severely  
 826 restricted medical use in treatment in the United States, and  
 827 abuse of the substance may lead to severe psychological or  
 828 physical dependence. The following substances are controlled in  
 829 Schedule II:

830 (a) Unless specifically excepted or unless listed in  
 831 another schedule, any of the following substances, whether  
 832 produced directly or indirectly by extraction from substances of  
 833 vegetable origin or independently by means of chemical  
 834 synthesis:

835 1. Opium and any salt, compound, derivative, or preparation  
 836 of opium, except nalmeferine or isoquinoline alkaloids of opium,  
 837 including, but not limited to the following:

- 838 a. Raw opium.
- 839 b. Opium extracts.
- 840 c. Opium fluid extracts.
- 841 d. Powdered opium.

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- 842 e. Granulated opium.
- 843 f. Tincture of opium.
- 844 g. Codeine.
- 845 h. Dihydroetorphine.
- 846 ~~i. h.~~ Ethylmorphine.
- 847 ~~j. i.~~ Etorphine hydrochloride.
- 848 k. j. Hydrocodone and hydrocodone combination products.
- 849 ~~l. k.~~ Hydromorphone.
- 850 ~~m. l.~~ Levo-alphaacetylmethadol (also known as levo-alpha-
- 851 acetylmethadol, levomethadyl acetate, or LAAM).
- 852 ~~n. m.~~ Metopon (methylhydromorphinone).
- 853 ~~o. n.~~ Morphine.
- 854 p. Oripavine.
- 855 ~~q. o.~~ Oxycodone.
- 856 ~~r. p.~~ Oxymorphone.
- 857 ~~s. q.~~ Thebaine.
- 858 2. Any salt, compound, derivative, or preparation of a
- 859 substance which is chemically equivalent to or identical with
- 860 any of the substances referred to in subparagraph 1., except
- 861 that these substances shall not include the isoquinoline
- 862 alkaloids of opium.
- 863 3. Any part of the plant of the species *Papaver somniferum*,
- 864 *L.*
- 865 4. Cocaine or ecgonine, including any of their
- 866 stereoisomers, and any salt, compound, derivative, or
- 867 preparation of cocaine or ecgonine, except that these substances
- 868 shall not include ioflupane I 123.
- 869 (b) Unless specifically excepted or unless listed in
- 870 another schedule, any of the following substances, including

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871 their isomers, esters, ethers, salts, and salts of isomers,  
 872 esters, and ethers, whenever the existence of such isomers,  
 873 esters, ethers, and salts is possible within the specific  
 874 chemical designation:

- 875 1. Alfentanil.
- 876 2. Alphaprodine.
- 877 3. Anileridine.
- 878 4. Bezitramide.
- 879 5. Bulk propoxyphene (nondosage forms).
- 880 6. Carfentanil.
- 881 7. Dihydrocodeine.
- 882 8. Diphenoxylate.
- 883 9. Fentanyl.
- 884 10. Isomethadone.
- 885 11. Levomethorphan.
- 886 12. Levorphanol.
- 887 13. Metazocine.
- 888 14. Methadone.
- 889 15. Methadone-Intermediate,4-cyano-2-  
 890 dimethylamino-4,4-diphenylbutane.
- 891 16. Moramide-Intermediate,2-methyl-  
 892 3-morpholino-1,1-diphenylpropane-carboxylic acid.
- 893 17. Nabilone.
- 894 18. Pethidine (meperidine).
- 895 19. Pethidine-Intermediate-A,4-cyano-1-  
 896 methyl-4-phenylpiperidine.
- 897 20. Pethidine-Intermediate-B,ethyl-4-  
 898 phenylpiperidine-4-carboxylate.
- 899 21. Pethidine-Intermediate-C,1-methyl-4- phenylpiperidine-

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900 4-carboxylic acid.

- 901 22. Phenazocine.
- 902 23. Phencyclidine.
- 903 24. 1-Phenylcyclohexylamine.
- 904 25. Piminodine.
- 905 26. 1-Piperidinocyclohexanecarbonitrile.
- 906 27. Racemethorphan.
- 907 28. Racemorphan.
- 908 29. Remifentanil.
- 909 ~~30.29.~~ Sufentanil.
- 910 31. Tapentadol.
- 911 32. Thiafentanil.

912 (c) Unless specifically excepted or unless listed in  
 913 another schedule, any material, compound, mixture, or  
 914 preparation which contains any quantity of the following  
 915 substances, including their salts, isomers, optical isomers,  
 916 salts of their isomers, and salts of their optical isomers:

- 917 1. Amobarbital.
- 918 2. Amphetamine.
- 919 3. Glutethimide.
- 920 4. Lisdexamfetamine.
- 921 ~~5.4.~~ Methamphetamine.
- 922 ~~6.5.~~ Methylphenidate.
- 923 ~~7.6.~~ Pentobarbital.
- 924 ~~8.7.~~ Phenmetrazine.
- 925 ~~9.8.~~ Phenylacetone.
- 926 ~~10.9.~~ Secobarbital.

927 (d) Dronabinol (synthetic THC) in oral solution in a drug  
 928 product approved by the United States Food and Drug

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929 Administration.

930 (3) SCHEDULE III.—A substance in Schedule III has a  
931 potential for abuse less than the substances contained in  
932 Schedules I and II and has a currently accepted medical use in  
933 treatment in the United States, and abuse of the substance may  
934 lead to moderate or low physical dependence or high  
935 psychological dependence or, in the case of anabolic steroids,  
936 may lead to physical damage. The following substances are  
937 controlled in Schedule III:

938 (a) Unless specifically excepted or unless listed in  
939 another schedule, any material, compound, mixture, or  
940 preparation which contains any quantity of the following  
941 substances having a depressant or stimulant effect on the  
942 nervous system:

943 1. Any substance which contains any quantity of a  
944 derivative of barbituric acid, including thiobarbituric acid, or  
945 any salt of a derivative of barbituric acid or thiobarbituric  
946 acid, including, but not limited to, butalbital and  
947 butalbital.

948 2. Benzphetamine.

949 3. Buprenorphine.

950 ~~4.3-~~ Chlorhexadol.

951 ~~5.4-~~ Chlorphentermine.

952 ~~6.5-~~ Clortermine.

953 7. Embutramide.

954 ~~8.6-~~ Lysergic acid.

955 ~~9.7-~~ Lysergic acid amide.

956 ~~10.8-~~ Methyprylon.

957 11. Perampanel.

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958 ~~12.9-~~ Phendimetrazine.959 ~~13.10-~~ Sulfondiethylmethane.960 ~~14.11-~~ Sulfonethylmethane.961 ~~15.12-~~ Sulfonmethane.962 ~~16.13-~~ Tiletamine and zolazepam or any salt thereof.

963 (b) Nalorphine.

964 (c) Unless specifically excepted or unless listed in  
965 another schedule, any material, compound, mixture, or  
966 preparation containing limited quantities of any of the  
967 following controlled substances or any salts thereof:

968 1. Not more than 1.8 grams of codeine per 100 milliliters  
969 or not more than 90 milligrams per dosage unit, with an equal or  
970 greater quantity of an isoquinoline alkaloid of opium.

971 2. Not more than 1.8 grams of codeine per 100 milliliters  
972 or not more than 90 milligrams per dosage unit, with recognized  
973 therapeutic amounts of one or more active ingredients which are  
974 not controlled substances.

975 3. Not more than 300 milligrams of hydrocodone per 100  
976 milliliters or not more than 15 milligrams per dosage unit, with  
977 a fourfold or greater quantity of an isoquinoline alkaloid of  
978 opium.

979 4. Not more than 300 milligrams of hydrocodone per 100  
980 milliliters or not more than 15 milligrams per dosage unit, with  
981 recognized therapeutic amounts of one or more active ingredients  
982 that are not controlled substances.

983 5. Not more than 1.8 grams of dihydrocodeine per 100  
984 milliliters or not more than 90 milligrams per dosage unit, with  
985 recognized therapeutic amounts of one or more active ingredients  
986 which are not controlled substances.

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987 6. Not more than 300 milligrams of ethylmorphine per 100  
 988 milliliters or not more than 15 milligrams per dosage unit, with  
 989 one or more active, nonnarcotic ingredients in recognized  
 990 therapeutic amounts.

991 7. Not more than 50 milligrams of morphine per 100  
 992 milliliters or per 100 grams, with recognized therapeutic  
 993 amounts of one or more active ingredients which are not  
 994 controlled substances.

995  
 996 For purposes of charging a person with a violation of s. 893.135  
 997 involving any controlled substance described in subparagraph 3.  
 998 or subparagraph 4., the controlled substance is a Schedule III  
 999 controlled substance pursuant to this paragraph but the weight  
 1000 of the controlled substance per milliliters or per dosage unit  
 1001 is not relevant to the charging of a violation of s. 893.135.  
 1002 The weight of the controlled substance shall be determined  
 1003 pursuant to s. 893.135(6).

1004 (d) Anabolic steroids.

1005 1. The term "anabolic steroid" means any drug or hormonal  
 1006 substance, chemically and pharmacologically related to  
 1007 testosterone, other than estrogens, progestins, and  
 1008 corticosteroids, that promotes muscle growth and includes:

- 1009 a. Androsterone.
- 1010 b. Androsterone acetate.
- 1011 c. Boldenone.
- 1012 d. Boldenone acetate.
- 1013 e. Boldenone benzoate.
- 1014 f. Boldenone undecylenate.
- 1015 g. Chlorotestosterone (Clostebol).

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- 1016 h. Dehydrochlormethyltestosterone.
- 1017 i. Dihydrotestosterone (Stanolone).
- 1018 j. Drostanolone.
- 1019 k. Ethylestrenol.
- 1020 l. Fluoxymesterone.
- 1021 m. Formebolone (Formebolone).
- 1022 n. Mesterolone.
- 1023 o. Methandrostenolone (Methandienone).
- 1024 p. Methandranone.
- 1025 q. Methandriol.
- 1026 r. Methenolone.
- 1027 s. Methyltestosterone.
- 1028 t. Mibolerone.
- 1029 u. Nortestosterone (Nandrolone).
- 1030 v. Norethandrolone.
- 1031 w. Nortestosterone decanoate.
- 1032 x. Nortestosterone phenylpropionate.
- 1033 y. Nortestosterone propionate.
- 1034 z. Oxandrolone.
- 1035 aa. Oxymesterone.
- 1036 bb. Oxymetholone.
- 1037 cc. Stanozolol.
- 1038 dd. Testolactone.
- 1039 ee. Testosterone.
- 1040 ff. Testosterone acetate.
- 1041 gg. Testosterone benzoate.
- 1042 hh. Testosterone cypionate.
- 1043 ii. Testosterone decanoate.
- 1044 jj. Testosterone enanthate.

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1045 kk. Testosterone isocaproate.  
 1046 ll. Testosterone oleate.  
 1047 mm. Testosterone phenylpropionate.  
 1048 nn. Testosterone propionate.  
 1049 oo. Testosterone undecanoate.  
 1050 pp. Trenbolone.  
 1051 qq. Trenbolone acetate.  
 1052 rr. Any salt, ester, or isomer of a drug or substance  
 1053 described or listed in this subparagraph if that salt, ester, or  
 1054 isomer promotes muscle growth.

1055 2. The term does not include an anabolic steroid that is  
 1056 expressly intended for administration through implants to cattle  
 1057 or other nonhuman species and that has been approved by the  
 1058 United States Secretary of Health and Human Services for such  
 1059 administration. However, any person who prescribes, dispenses,  
 1060 or distributes such a steroid for human use is considered to  
 1061 have prescribed, dispensed, or distributed an anabolic steroid  
 1062 within the meaning of this paragraph.

1063 (e) Ketamine, including any isomers, esters, ethers, salts,  
 1064 and salts of isomers, esters, and ethers, whenever the existence  
 1065 of such isomers, esters, ethers, and salts is possible within  
 1066 the specific chemical designation.

1067 (f) Dronabinol (synthetic THC) in sesame oil and  
 1068 encapsulated in a soft gelatin capsule in a drug product  
 1069 approved by the United States Food and Drug Administration.

1070 (g) Any drug product containing gamma-hydroxybutyric acid,  
 1071 including its salts, isomers, and salts of isomers, for which an  
 1072 application is approved under s. 505 of the Federal Food, Drug,  
 1073 and Cosmetic Act.

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1074 (4) (a) SCHEDULE IV.—A substance in Schedule IV has a low  
 1075 potential for abuse relative to the substances in Schedule III  
 1076 and has a currently accepted medical use in treatment in the  
 1077 United States, and abuse of the substance may lead to limited  
 1078 physical or psychological dependence relative to the substances  
 1079 in Schedule III.

1080 (b) Unless specifically excepted or unless listed in  
 1081 another schedule, any material, compound, mixture, or  
 1082 preparation which contains any quantity of the following  
 1083 substances, including its salts, isomers, and salts of isomers  
 1084 whenever the existence of such salts, isomers, and salts of  
 1085 isomers is possible within the specific chemical designation,  
 1086 are controlled in Schedule IV:

1087 1. Alfaxalone.  
 1088 2. ~~(a)~~ Alprazolam.  
 1089 3. ~~(b)~~ Barbital.  
 1090 4. ~~(c)~~ Bromazepam.  
 1091 5. ~~(iii)~~ Butorphanol tartrate.  
 1092 6. ~~(d)~~ Camazepam.  
 1093 7. ~~(jjj)~~ Carisoprodol.  
 1094 8. ~~(e)~~ Cathine.  
 1095 9. ~~(f)~~ Chloral betaine.  
 1096 10. ~~(g)~~ Chloral hydrate.  
 1097 11. ~~(h)~~ Chlordiazepoxide.  
 1098 12. ~~(i)~~ Clobazam.  
 1099 13. ~~(j)~~ Clonazepam.  
 1100 14. ~~(k)~~ Clorazepate.  
 1101 15. ~~(l)~~ Clotiazepam.  
 1102 16. ~~(m)~~ Cloxazolam.

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1103 17. Dexfenfluramine.  
 1104 ~~18. (n)~~ Delorazepam.  
 1105 19. Dichloralphenazone.  
 1106 ~~20. (p)~~ Diazepam.  
 1107 ~~21. (q)~~ Diethylpropion.  
 1108 22. Eluxadoline.  
 1109 ~~23. (r)~~ Estazolam.  
 1110 24. Eszopiclone.  
 1111 ~~25. (s)~~ Ethchlorvynol.  
 1112 ~~26. (t)~~ Ethinamate.  
 1113 27. (u) Ethyl loflazepate.  
 1114 ~~28. (v)~~ Fencamfamin.  
 1115 ~~29. (w)~~ Fenfluramine.  
 1116 ~~30. (x)~~ Fenproporex.  
 1117 31. (y) Fludiazepam.  
 1118 ~~32. (z)~~ Flurazepam.  
 1119 33. Fospropofol.  
 1120 ~~34. (aa)~~ Halazepam.  
 1121 ~~35. (bb)~~ Haloxazolam.  
 1122 ~~36. (cc)~~ Ketazolam.  
 1123 ~~37. (dd)~~ Loprazolam.  
 1124 ~~38. (ee)~~ Lorazepam.  
 1125 39. Lorcaserin.  
 1126 ~~40. (ff)~~ Lormetazepam.  
 1127 ~~41. (gg)~~ Mazindol.  
 1128 ~~42. (hh)~~ Mebutamate.  
 1129 ~~43. (ii)~~ Medazepam.  
 1130 ~~44. (jj)~~ Mefenorex.  
 1131 ~~45. (kk)~~ Meprobamate.

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1132 ~~46. (ll)~~ Methohexital.  
 1133 ~~47. (mm)~~ Methylphenobarbital.  
 1134 ~~48. (nn)~~ Midazolam.  
 1135 49. Modafinil.  
 1136 ~~50. (oo)~~ Nimetazepam.  
 1137 ~~51. (pp)~~ Nitrazepam.  
 1138 ~~52. (qq)~~ Nordiazepam.  
 1139 ~~53. (rr)~~ Oxazepam.  
 1140 ~~54. (ss)~~ Oxazolam.  
 1141 ~~55. (tt)~~ Paraldehyde.  
 1142 ~~56. (uu)~~ Pemoline.  
 1143 ~~57. (vv)~~ Pentazocine.  
 1144 58. Petrichloral.  
 1145 ~~59. (ww)~~ Phenobarbital.  
 1146 ~~60. (xx)~~ Phentermine.  
 1147 61. (yy) Pinazepam.  
 1148 ~~62. (zz)~~ Pipradrol.  
 1149 ~~63. (aaa)~~ Prazepam.  
 1150 64. (e) Propoxyphene (dosage forms).  
 1151 ~~65. (bbb)~~ Propylhexedrine, excluding any patent or  
 1152 proprietary preparation containing propylhexedrine, unless  
 1153 otherwise provided by federal law.  
 1154 ~~66. (ccc)~~ Quazepam.  
 1155 67. Sibutramine.  
 1156 ~~68. (eee)~~ SPA[(-)-1 dimethylamino-1, 2  
 1157 diphenylethane].  
 1158 69. Suvorexant.  
 1159 ~~70. (fff)~~ Temazepam.  
 1160 ~~71. (ddd)~~ Tetrazepam.

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1161 72. Tramadol.  
 1162 ~~73. (ggg)~~ Triazolam.  
 1163 74. Zaleplon.  
 1164 75. Zolpidem.  
 1165 76. Zopiclone.  
 1166 ~~77. (hhh)~~ Not more than 1 milligram of difenoxin and not  
 1167 less than 25 micrograms of atropine sulfate per dosage unit.  
 1168 (5) SCHEDULE V.—A substance, compound, mixture, or  
 1169 preparation of a substance in Schedule V has a low potential for  
 1170 abuse relative to the substances in Schedule IV and has a  
 1171 currently accepted medical use in treatment in the United  
 1172 States, and abuse of such compound, mixture, or preparation may  
 1173 lead to limited physical or psychological dependence relative to  
 1174 the substances in Schedule IV.  
 1175 (a) Substances controlled in Schedule V include any  
 1176 compound, mixture, or preparation containing any of the  
 1177 following limited quantities of controlled substances, which  
 1178 must shall include one or more active medicinal ingredients that  
 1179 ~~which~~ are not controlled substances in sufficient proportion to  
 1180 confer upon the compound, mixture, or preparation valuable  
 1181 medicinal qualities other than those possessed by the controlled  
 1182 substance alone:  
 1183 1. Not more than 200 milligrams of codeine per 100  
 1184 milliliters or per 100 grams.  
 1185 2. Not more than 100 milligrams of dihydrocodeine per 100  
 1186 milliliters or per 100 grams.  
 1187 3. Not more than 100 milligrams of ethylmorphine per 100  
 1188 milliliters or per 100 grams.  
 1189 4. Not more than 2.5 milligrams of diphenoxylate and not

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1190 less than 25 micrograms of atropine sulfate per dosage unit.  
 1191 5. Not more than 100 milligrams of opium per 100  
 1192 milliliters or per 100 grams.  
 1193 6. Not more than 0.5 milligrams of difenoxin and not less  
 1194 than 25 micrograms of atropine sulfate per dosage unit.  
 1195 (b) Unless a specific exception exists or unless listed in  
 1196 another schedule, any material, compound, mixture, or  
 1197 preparation that contains any quantity of the following  
 1198 substances is controlled in Schedule V:  
 1199 1. Brivaracetam.  
 1200 2. Ezogabine.  
 1201 3. Lacosamide.  
 1202 4. Pregabalin Narcotic drugs. ~~Unless specifically excepted~~  
 1203 ~~or unless listed in another schedule, any material, compound,~~  
 1204 ~~mixture, or preparation containing any of the following narcotic~~  
 1205 ~~drugs and their salts: Buprenorphine.~~  
 1206 (c) Stimulants. Unless specifically excepted or unless  
 1207 listed in another schedule, any material, compound, mixture, or  
 1208 preparation which contains any quantity of the following  
 1209 substances having a stimulant effect on the central nervous  
 1210 system, including its salts, isomers, and salts of isomers:  
 1211 Pyrovalerone.  
 1212 Section 11. Section 893.055, Florida Statutes, is amended  
 1213 to read:  
 1214 (Substantial rewording of section. See  
 1215 s. 893.055, F.S., for present text.)  
 1216 893.055 Prescription drug monitoring program.—  
 1217 (1) As used in this section, the term:  
 1218 (a) "Active investigation" means an investigation that is

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1219 being conducted with a reasonable, good faith belief that it  
 1220 could lead to the filing of administrative, civil, or criminal  
 1221 proceedings, or that is ongoing and continuing and for which  
 1222 there is a reasonable, good faith anticipation of securing an  
 1223 arrest or prosecution in the foreseeable future.

1224 (b) "Administration" means the obtaining and giving of a  
 1225 single dose of a controlled substance by a legally authorized  
 1226 person to a patient for her or his consumption.

1227 (c) "Controlled substance" means a controlled substance  
 1228 listed in Schedule II, Schedule III, Schedule IV, or Schedule V  
 1229 of s. 893.03 or 21 U.S.C. s. 812.

1230 (d) "Dispense" means the transfer of possession of one or  
 1231 more doses of a controlled substance by a dispenser to the  
 1232 ultimate consumer or to his or her agent.

1233 (e) "Dispenser" means a dispensing health care  
 1234 practitioner, pharmacy, or pharmacist licensed to dispense  
 1235 controlled substances in or into this state.

1236 (f) "Health care practitioner" or "practitioner" means any  
 1237 practitioner licensed under chapter 458, chapter 459, chapter  
 1238 461, chapter 463, chapter 464, chapter 465, or chapter 466.

1239 (g) "Health care regulatory board" has the same meaning as  
 1240 s. 456.001(1).

1241 (h) "Law enforcement agency" means the Department of Law  
 1242 Enforcement, a sheriff's office in this state, a police  
 1243 department in this state, or a law enforcement agency of the  
 1244 Federal Government which enforces the laws of this state or the  
 1245 United States relating to controlled substances and whose agents  
 1246 and officers are empowered by law to conduct criminal  
 1247 investigations and make arrests.

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1248 (i) "Pharmacy" includes a community pharmacy, an  
 1249 institutional pharmacy, a nuclear pharmacy, a special pharmacy,  
 1250 or an Internet pharmacy that is licensed by the department under  
 1251 chapter 465 and that dispenses or delivers controlled substances  
 1252 to an individual or address in this state.

1253 (j) "Prescriber" means a prescribing physician, prescribing  
 1254 practitioner, or other prescribing health care practitioner  
 1255 authorized by the laws of this state to order controlled  
 1256 substances.

1257 (k) "Program manager" means an employee of or a person  
 1258 contracted by the department who is designated to ensure the  
 1259 integrity of the prescription drug monitoring program in  
 1260 accordance with the requirements established in this section.

1261 (2) (a) The department shall maintain an electronic system  
 1262 to collect and store controlled substance dispensing information  
 1263 and shall release the information as authorized in this section  
 1264 and s. 893.0551. The electronic system must:

1265 1. Not infringe upon the legitimate prescribing or  
 1266 dispensing of a controlled substance by a prescriber or  
 1267 dispenser acting in good faith and in the course of professional  
 1268 practice.

1269 2. Be consistent with standards of the American Society for  
 1270 Automation in Pharmacy.

1271 3. Comply with the Health Insurance Portability and  
 1272 Accountability Act as it pertains to protected health  
 1273 information, electronic protected health information, and all  
 1274 other relevant state and federal privacy and security laws and  
 1275 regulations.

1276 (b) The department may collaborate with professional health

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1277 care regulatory boards, appropriate organizations, and other  
 1278 state agencies to identify indicators of controlled substance  
 1279 abuse.

1280 (3) For each controlled substance dispensed to a patient in  
 1281 the state, the following information must be reported by the  
 1282 dispenser to the system as soon thereafter as possible but no  
 1283 later than the close of the next business day after the day the  
 1284 controlled substance is dispensed unless an extension or  
 1285 exemption is approved by the department:

1286 (a) The name of the prescribing practitioner, the  
 1287 practitioner's federal Drug Enforcement Administration  
 1288 registration number, the practitioner's National Provider  
 1289 Identification (NPI) or other appropriate identifier, and the  
 1290 date of the prescription.

1291 (b) The date the prescription was filled and the method of  
 1292 payment, such as cash by an individual, insurance coverage  
 1293 through a third party, or Medicaid payment. This paragraph does  
 1294 not authorize the department to include individual credit card  
 1295 numbers or other account numbers in the system.

1296 (c) The full name, address, telephone number, and date of  
 1297 birth of the person for whom the prescription was written.

1298 (d) The name, national drug code, quantity, and strength of  
 1299 the controlled substance dispensed.

1300 (e) The full name, federal Drug Enforcement Administration  
 1301 registration number, State of Florida Department of Health  
 1302 issued pharmacy permit number, and address of the pharmacy or  
 1303 other location from which the controlled substance was  
 1304 dispensed. If the controlled substance was dispensed by a  
 1305 practitioner other than a pharmacist, the practitioner's full

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1306 name, address, federal Drug Enforcement Administration  
 1307 registration number, State of Florida Department of Health  
 1308 issued license number, and National Provider Identification  
 1309 (NPI).

1310 (f) Whether the drug was dispensed as an initial  
 1311 prescription or a refill, and the number of refills ordered.

1312 (g) The name of the individual picking up the controlled  
 1313 substance prescription and type and issuer of the identification  
 1314 provided.

1315 (h) Other appropriate identifying information as determined  
 1316 by department rule.

1317

1318 All acts of administration of controlled substances are exempt  
 1319 from the reporting requirements of this subsection.

1320 (4) The following must be provided direct access to  
 1321 information in the system:

1322 (a) A prescriber or dispenser or his or her designee.

1323 (b) An employee of the United States Department of Veterans  
 1324 Affairs, United States Department of Defense, or the Indian  
 1325 Health Service who provides health care services pursuant to  
 1326 such employment and who has the authority to prescribe  
 1327 controlled substances shall have access to the information in  
 1328 the program's system upon verification of employment.

1329 (c) The program manager or designated program and support  
 1330 staff may have access to administer the system.

1331 1. In order to calculate performance measures pursuant to  
 1332 subsection (14), the program manager or program and support  
 1333 staff members who have been directed by the program manager to  
 1334 calculate performance measures may have direct access to

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1335 information that contains no identifying information of any  
 1336 patient, physician, health care practitioner, prescriber, or  
 1337 dispenser.

1338 2. The program manager or designated program and support  
 1339 staff must provide the department, upon request, data that does  
 1340 not contain patient, physician, health care practitioner,  
 1341 prescriber, or dispenser identifying information for public  
 1342 health care and safety initiatives purposes.

1343 3. The program manager, upon determining a pattern  
 1344 consistent with the department's rules established under  
 1345 subsection (16), may provide relevant information to the  
 1346 prescriber and dispenser.

1347 4. The program manager, upon determining a pattern  
 1348 consistent with the rules established under subsection (16) and  
 1349 having cause to believe a violation of s. 893.13(7)(a)8.,  
 1350 (8)(a), or (8)(b) has occurred, may provide relevant information  
 1351 to the applicable law enforcement agency.

1352

1353 The program manager and designated program and support staff  
 1354 must complete a level II background screening.

1355 (5) The following entities may not directly access  
 1356 information in the system, but may request information from the  
 1357 program manager or designated program and support staff:

1358 (a) The department and its health care regulatory boards,  
 1359 as appropriate, for investigations involving licensees  
 1360 authorized to prescribe or dispense controlled substances.

1361 (b) The Attorney General for Medicaid fraud cases involving  
 1362 prescribed controlled substances.

1363 (c) A law enforcement agency during active investigations

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1364 of potential criminal activity, fraud, or theft regarding  
 1365 prescribed controlled substances.

1366 (d) A medical examiner when conducting an authorized  
 1367 investigation under s. 406.11, to determine the cause of death  
 1368 of an individual.

1369 (e) An impaired practitioner consultant who is retained by  
 1370 the department under s. 456.076 to review the system information  
 1371 of an impaired practitioner program participant or a referral  
 1372 who has agreed to be evaluated or monitored through the program  
 1373 and who has separately agreed in writing to the consultant's  
 1374 access to and review of such information.

1375 (f) A patient or the legal guardian or designated health  
 1376 care surrogate of an incapacitated patient who submits a written  
 1377 and notarized request that includes the patient's full name,  
 1378 address, phone number, date of birth, and a copy of a  
 1379 government-issued photo identification.

1380 (6) The department may enter into a reciprocal agreement or  
 1381 contract to share prescription drug monitoring information with  
 1382 another state, district, or territory if the prescription drug  
 1383 monitoring programs of other states, districts, or territories  
 1384 are compatible with the Florida program.

1385 (a) In determining compatibility, the department shall  
 1386 consider:

1387 1. The safeguards for privacy of patient records and the  
 1388 success of the program in protecting patient privacy.

1389 2. The persons authorized to view the data collected by the  
 1390 program. Comparable entities and licensed health care  
 1391 practitioners in other states, districts, or territories of the  
 1392 United States, law enforcement agencies, the Attorney General's

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1393 Medicaid Fraud Control Unit, medical regulatory boards, and, as  
 1394 needed, management staff that have similar duties as management  
 1395 staff who work with the prescription drug monitoring program as  
 1396 authorized in s. 893.0551 are authorized access upon approval by  
 1397 the department.

1398 3. The schedules of the controlled substances that are  
 1399 monitored by the program.

1400 4. The data reported to or included in the program's  
 1401 system.

1402 5. Any implementing criteria deemed essential for a  
 1403 thorough comparison.

1404 6. The costs and benefits to the state of sharing  
 1405 prescription information.

1406 (b) The department shall assess the prescription drug  
 1407 monitoring program's continued compatibility with the other  
 1408 state's, district's, or territory's program every 4 years.

1409 (c) Any agreement or contract for sharing of prescription  
 1410 drug monitoring information between the department and another  
 1411 state, district, or territory shall contain the same  
 1412 restrictions and requirements as this section or s. 893.0551,  
 1413 and the information must be provided according to the  
 1414 department's determination of compatibility.

1415 (7) The department may enter into agreements or contracts  
 1416 to establish secure connections between the system and a  
 1417 prescribing or dispensing health care practitioner's electronic  
 1418 health recordkeeping system. The electronic health recordkeeping  
 1419 system owner or license holder will be responsible for ensuring  
 1420 that only authorized individuals have access to prescription  
 1421 drug monitoring program information.

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1422 (8) A prescriber or dispenser or a designee of a prescriber  
 1423 or dispenser must consult the system to review a patient's  
 1424 controlled substance dispensing history before prescribing or  
 1425 dispensing a controlled substance.

1426 (a) The duty to consult the system does not apply to a  
 1427 prescriber or dispenser or designee of a prescriber or dispenser  
 1428 if the system is not operational, as determined by the  
 1429 department, or when it cannot be accessed by a health care  
 1430 practitioner because of a temporary technological or electrical  
 1431 failure.

1432 (b) A prescriber or dispenser or designee of a prescriber  
 1433 or dispenser who does not consult the system under this  
 1434 subsection shall document the reason he or she did not consult  
 1435 the system in the patient's medical record or prescription  
 1436 record, and shall not prescribe or dispense greater than a 3-day  
 1437 supply of a controlled substance to the patient.

1438 (c) The department shall issue a citation pursuant to the  
 1439 procedure in s. 456.077 to any prescriber or dispenser who fails  
 1440 to consult the system as required by this subsection.

1441 (9) A person who willfully and knowingly fails to report  
 1442 the dispensing of a controlled substance as required by this  
 1443 section commits a misdemeanor of the first degree, punishable as  
 1444 provided in s. 775.082 or s. 775.083.

1445 (10) Information in the prescription drug monitoring  
 1446 program's system may be released only as provided in this  
 1447 section and s. 893.0551. The content of the system is intended  
 1448 to be informational only. Information in the system is not  
 1449 subject to discovery or introduction into evidence in any civil  
 1450 or administrative action against a prescriber, dispenser,

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1451 pharmacy, or patient arising out of matters that are the subject  
 1452 of information in the system. The program manager and authorized  
 1453 persons who participate in preparing, reviewing, issuing, or any  
 1454 other activity related to management of the system may not be  
 1455 permitted or required to testify in any such civil or  
 1456 administrative action as to any findings, recommendations,  
 1457 evaluations, opinions, or other actions taken in connection with  
 1458 management of the system.

1459 (11) A prescriber or dispenser, or his or her designee, may  
 1460 have access to the information under this section which relates  
 1461 to a patient of that prescriber or dispenser as needed for the  
 1462 purpose of reviewing the patient's controlled drug prescription  
 1463 history. A prescriber or dispenser acting in good faith is  
 1464 immune from any civil, criminal, or administrative liability  
 1465 that might otherwise be incurred or imposed for receiving or  
 1466 using information from the prescription drug monitoring program.  
 1467 This subsection does not create a private cause of action, and a  
 1468 person may not recover damages against a prescriber or dispenser  
 1469 authorized to access information under this subsection for  
 1470 accessing or failing to access such information.

1471 (12) (a) All costs incurred by the department in  
 1472 administering the prescription drug monitoring program shall be  
 1473 funded through federal grants, private funding applied for or  
 1474 received by the state, or state funds appropriated in the  
 1475 General Appropriations Act. The department may not:

- 1476 1. Commit funds for the monitoring program without ensuring  
 1477 funding is available; or
- 1478 2. Use funds provided, directly or indirectly by  
 1479 prescription drug manufacturers to implement the program.

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1480 (b) The department shall cooperate with the direct-support  
 1481 organization established under subsection (15) in seeking  
 1482 federal grant funds, other nonstate grant funds, gifts,  
 1483 donations, or other private moneys for the department if the  
 1484 costs of doing so are immaterial. Immaterial costs include, but  
 1485 are not limited to, the costs of mailing and personnel assigned  
 1486 to research or apply for a grant. The department may  
 1487 competitively procure and contract pursuant to s. 287.057 for  
 1488 any goods and services required by this section.

1489 (13) The department shall conduct or participate in studies  
 1490 to examine the feasibility of enhancing the prescription drug  
 1491 monitoring program for the purposes of public health initiatives  
 1492 and statistical reporting. Such studies shall respect the  
 1493 privacy of the patient, the prescriber, and the dispenser. Such  
 1494 studies may be conducted by the department or a contracted  
 1495 vendor in order to:

1496 (a) Improve the quality of health care services and safety  
 1497 by improving prescribing and dispensing practices for controlled  
 1498 substances;

1499 (b) Take advantage of advances in technology;

1500 (c) Reduce duplicative prescriptions and the  
 1501 overprescribing of controlled substances; and

1502 (d) Reduce drug abuse.

1503 (14) The department shall annually report on performance  
 1504 measures to the Governor, the President of the Senate, and the  
 1505 Speaker of the House of Representatives by December 1.  
 1506 Performance measures may include, but are not limited to, the  
 1507 following outcomes:

1508 (a) Reduction of the rate of inappropriate use of



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1509 controlled substances through department education and safety  
1510 efforts.

1511 (b) Reduction of the quantity of controlled substances  
1512 obtained by individuals attempting to engage in fraud and  
1513 deceit.

1514 (c) Increased coordination among partners participating in  
1515 the prescription drug monitoring program.

1516 (d) Involvement of stakeholders in achieving improved  
1517 patient health care and safety and reduction of controlled  
1518 substance abuse and controlled substance diversion.

1519 (15) The department may establish a direct-support  
1520 organization to provide assistance, funding, and promotional  
1521 support for the activities authorized for the prescription drug  
1522 monitoring program.

1523 (a) As used in this subsection, the term "direct-support  
1524 organization" means an organization that is:

1525 1. A Florida corporation not for profit incorporated under  
1526 chapter 617, exempted from filing fees, and approved by the  
1527 Department of State.

1528 2. Organized and operated to conduct programs and  
1529 activities; raise funds; request and receive grants, gifts, and  
1530 bequests of money; acquire, receive, hold, and invest, in its  
1531 own name, securities, funds, objects of value, or other  
1532 property, either real or personal; and make expenditures or  
1533 provide funding to or for the direct or indirect benefit of the  
1534 department in the furtherance of the prescription drug  
1535 monitoring program.

1536 (b) The State Surgeon General shall appoint a board of  
1537 directors for the direct-support organization.

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1538 1. The board of directors shall consist of no fewer than  
1539 five members who shall serve at the pleasure of the State  
1540 Surgeon General.

1541 2. The State Surgeon General shall provide guidance to  
1542 members of the board to ensure that moneys received by the  
1543 direct-support organization are not received from inappropriate  
1544 sources. Inappropriate sources include, but are not limited to,  
1545 donors, grantors, persons, prescription drug manufacturers, or  
1546 organizations that may monetarily or substantively benefit from  
1547 the purchase of goods or services by the department in  
1548 furtherance of the prescription drug monitoring program.

1549 (c) The direct-support organization shall operate under  
1550 written contract with the department. The contract must, at a  
1551 minimum, provide for:

1552 1. Approval of the articles of incorporation and bylaws of  
1553 the direct-support organization by the department.

1554 2. Submission of an annual budget for the approval of the  
1555 department.

1556 3. The reversion, without penalty, to the department's  
1557 grants and donations trust fund for the administration of the  
1558 prescription drug monitoring program of all moneys and property  
1559 held in trust by the direct-support organization for the benefit  
1560 of the prescription drug monitoring program if the direct-  
1561 support organization ceases to exist or if the contract is  
1562 terminated.

1563 4. The fiscal year of the direct-support organization,  
1564 which must begin July 1 of each year and end June 30 of the  
1565 following year.

1566 5. The disclosure of the material provisions of the

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1567 contract to donors of gifts, contributions, or bequests,  
 1568 including such disclosure on all promotional and fundraising  
 1569 publications, and an explanation to such donors of the  
 1570 distinction between the department and the direct-support  
 1571 organization.

1572 6. The direct-support organization's collecting, expending,  
 1573 and providing of funds to the department for the development,  
 1574 implementation, and operation of the prescription drug  
 1575 monitoring program as described in this section. The direct-  
 1576 support organization may collect and expend funds to be used for  
 1577 the functions of the direct-support organization's board of  
 1578 directors, as necessary and approved by the department. In  
 1579 addition, the direct-support organization may collect and  
 1580 provide funding to the department in furtherance of the  
 1581 prescription drug monitoring program by:

1582 a. Establishing and administering the prescription drug  
 1583 monitoring program's electronic system, including hardware and  
 1584 software.

1585 b. Conducting studies on the efficiency and effectiveness  
 1586 of the program to include feasibility studies as described in  
 1587 subsection (13).

1588 c. Providing funds for future enhancements of the program  
 1589 within the intent of this section.

1590 d. Providing user training of the prescription drug  
 1591 monitoring program, including distribution of materials to  
 1592 promote public awareness and education and conducting workshops  
 1593 or other meetings, for health care practitioners, pharmacists,  
 1594 and others as appropriate.

1595 e. Providing funds for travel expenses.

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1596 f. Providing funds for administrative costs, including  
 1597 personnel, audits, facilities, and equipment.

1598 g. Fulfilling all other requirements necessary to implement  
 1599 and operate the program as outlined in this section.

1600 7. Certification by the department that the direct-support  
 1601 organization is complying with the terms of the contract in a  
 1602 manner consistent with and in furtherance of the goals and  
 1603 purposes of the prescription drug monitoring program and in the  
 1604 best interests of the state. Such certification must be made  
 1605 annually and reported in the official minutes of a meeting of  
 1606 the direct-support organization.

1607 (d) The activities of the direct-support organization must  
 1608 be consistent with the goals and mission of the department, as  
 1609 determined by the department, and in the best interests of the  
 1610 state. The direct-support organization must obtain written  
 1611 approval from the department for any activities in support of  
 1612 the prescription drug monitoring program before undertaking  
 1613 those activities.

1614 (e) The direct-support organization shall provide for an  
 1615 independent annual financial audit in accordance with s.  
 1616 215.981. Copies of the audit shall be provided to the department  
 1617 and the Office of Policy and Budget in the Executive Office of  
 1618 the Governor.

1619 (f) The direct-support organization may not exercise any  
 1620 power under s. 617.0302(12) or (16).

1621 (g) The direct-support organization is not considered a  
 1622 lobbying firm within the meaning of s. 11.045.

1623 (h) The department may permit, without charge, appropriate  
 1624 use of administrative services, property, and facilities of the

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1625 department by the direct-support organization, subject to this  
 1626 section. The use must be directly in keeping with the approved  
 1627 purposes of the direct-support organization and may not be made  
 1628 at times or places that would unreasonably interfere with  
 1629 opportunities for the public to use such facilities for  
 1630 established purposes. Any moneys received from rentals of  
 1631 facilities and properties managed by the department may be held  
 1632 in a separate depository account in the name of the direct-  
 1633 support organization and subject to the provisions of the letter  
 1634 of agreement with the department. The letter of agreement must  
 1635 provide that any funds held in the separate depository account  
 1636 in the name of the direct-support organization must revert to  
 1637 the department if the direct-support organization is no longer  
 1638 approved by the department to operate in the best interests of  
 1639 the state.

1640 (i) The department may adopt rules under s. 120.54 to  
 1641 govern the use of administrative services, property, or  
 1642 facilities of the department or office by the direct-support  
 1643 organization.

1644 (j) The department may not permit the use of any  
 1645 administrative services, property, or facilities of the state by  
 1646 a direct-support organization if that organization does not  
 1647 provide equal membership and employment opportunities to all  
 1648 persons regardless of race, color, religion, gender, age, or  
 1649 national origin.

1650 (k) This subsection is repealed October 1, 2027, unless  
 1651 reviewed and saved from repeal by the Legislature.

1652 (16) The department shall adopt rules necessary to  
 1653 implement this section.

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1654 Section 12. Section 893.0551, Florida Statutes, is amended  
 1655 to read:

1656 893.0551 Public records exemption for the prescription drug  
 1657 monitoring program.—

1658 (1) For purposes of this section, the terms used in this  
 1659 section have the same meanings as provided in s. 893.055.

1660 (2) The following information of a patient or patient's  
 1661 agent, a health care practitioner, a dispenser, an employee of  
 1662 the practitioner who is acting on behalf of and at the direction  
 1663 of the practitioner, a pharmacist, or a pharmacy that is  
 1664 contained in records held by the department under s. 893.055 is  
 1665 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 1666 of the State Constitution:

1667 (a) Name.

1668 (b) Address.

1669 (c) Telephone number.

1670 (d) Insurance plan number.

1671 (e) Government-issued identification number.

1672 (f) Provider number.

1673 (g) Drug Enforcement Administration number.

1674 (h) Any other unique identifying information or number.

1675 (3) The department shall disclose such ~~confidential and~~  
 1676 ~~exempt~~ information to the following persons or entities upon  
 1677 request and after using a verification process to ensure the  
 1678 legitimacy of the request as provided in s. 893.055:

1679 (a) A health care practitioner, or his or her designee, who  
 1680 certifies that the information is necessary to provide medical  
 1681 treatment to a current patient in accordance with ss. 893.05 and  
 1682 893.055.

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1683 (b) A qualified physician, to review a patient's controlled  
 1684 drug prescription history before issuing a physician  
 1685 certification pursuant to s. 381.986.

1686 (c) An employee of the United States Department of Veterans  
 1687 Affairs, United States Department of Defense, or the Indian  
 1688 Health Service who provides health care services pursuant to  
 1689 such employment and who has the authority to prescribe  
 1690 controlled substances shall have access to the information in  
 1691 the program's system upon verification of such employment.

1692 (d) The program manager and designated support staff for  
 1693 administration of the program, and to provide relevant  
 1694 information to the prescriber, dispenser, and appropriate law  
 1695 enforcement agencies, in accordance with s. 893.055.

1696 (e) The department for investigations involving licensees  
 1697 authorized to prescribe or dispense controlled substances. The  
 1698 department may request information from the program but may not  
 1699 have direct access to its system. The department may provide to  
 1700 a law enforcement agency pursuant to ss. 456.066 and 456.073  
 1701 only information that is relevant to the specific controlled  
 1702 substances investigation that prompted the request for the  
 1703 information.

1704 (f)(a) The Attorney General or his or her designee when  
 1705 working on Medicaid fraud cases involving prescribed controlled  
 1706 substances ~~prescription drugs~~ or when the Attorney General has  
 1707 initiated a review of specific identifiers of Medicaid fraud or  
 1708 specific identifiers that warrant a Medicaid investigation  
 1709 regarding prescribed controlled substances ~~prescription drugs~~.  
 1710 The Attorney General's Medicaid fraud investigators may not have  
 1711 direct access to the department's system database. The Attorney

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1712 General or his or her designee may disclose to a criminal  
 1713 justice agency, as defined in s. 119.011, only the ~~confidential~~  
 1714 ~~and exempt~~ information received from the department that is  
 1715 relevant to an identified active investigation that prompted the  
 1716 request for the information.

1717 (g)(b) The department's relevant health care regulatory  
 1718 boards responsible for the licensure, regulation, or discipline  
 1719 of a practitioner, pharmacist, or other person who is authorized  
 1720 to prescribe, administer, or dispense controlled substances and  
 1721 who is involved in a specific controlled substances  
 1722 investigation for prescription drugs involving a designated  
 1723 person. The health care regulatory boards may request  
 1724 information from the department but may not have direct access  
 1725 to its database. The health care regulatory boards may provide  
 1726 to a law enforcement agency pursuant to ss. 456.066 and 456.073  
 1727 only information that is relevant to the specific controlled  
 1728 substances investigation that prompted the request for the  
 1729 information.

1730 (h)(e) A law enforcement agency that has initiated an  
 1731 active investigation involving a specific violation of law  
 1732 regarding prescription drug abuse or diversion of prescribed  
 1733 controlled substances and that has entered into a user agreement  
 1734 with the department. A law enforcement agency may request  
 1735 information from the department but may not have direct access  
 1736 to its ~~system database~~. The law enforcement agency may disclose  
 1737 to a criminal justice agency, as defined in s. 119.011, only  
 1738 ~~confidential and exempt~~ information received from the department  
 1739 that is relevant to an identified active investigation that  
 1740 prompted the request for such information.

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1741 (i) A district medical examiner or associate medical  
 1742 examiner, as described in s. 406.06, pursuant to his or her  
 1743 official duties, as required by s. 406.11, to determine the  
 1744 cause of death of an individual. Such medical examiners may  
 1745 request information from the department but may not have direct  
 1746 access to the system

1747 ~~(d) A health care practitioner, or his or her designee, who~~  
 1748 ~~certifies that the information is necessary to provide medical~~  
 1749 ~~treatment to a current patient in accordance with ss. 893.05 and~~  
 1750 ~~893.055.~~

1751 ~~(e) A pharmacist, or his or her designee, who certifies~~  
 1752 ~~that the requested information will be used to dispense~~  
 1753 ~~controlled substances to a current patient in accordance with~~  
 1754 ~~ss. 893.04 and 893.055.~~

1755 ~~(f) A patient or the legal guardian or designated health~~  
 1756 ~~care surrogate for an incapacitated patient, if applicable,~~  
 1757 ~~making a request as provided in s. 893.055(7)(c)4.~~

1758 ~~(g) The patient's pharmacy, prescriber, or dispenser, or~~  
 1759 ~~the designee of the pharmacy, prescriber, or dispenser, who~~  
 1760 ~~certifies that the information is necessary to provide medical~~  
 1761 ~~treatment to his or her current patient in accordance with s.~~  
 1762 ~~893.055.~~

1763 (j)(h) An impaired practitioner consultant who has been  
 1764 authorized in writing by a participant in, or by a referral to,  
 1765 the impaired practitioner program to access and review  
 1766 information as provided in s. 893.055(5)(e) ~~893.055(7)(c)5.~~

1767 (k) A patient or the legal guardian or designated health  
 1768 care surrogate for an incapacitated patient, if applicable,  
 1769 making a request as provided in s. 893.055(5)(f).

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1770 (4) If the department determines consistent with its rules  
 1771 that a pattern of controlled substance abuse exists, the  
 1772 department may disclose such confidential and exempt information  
 1773 to the applicable law enforcement agency in accordance with s.  
 1774 893.055. The law enforcement agency may disclose to a criminal  
 1775 justice agency, as defined in s. 119.011, only ~~confidential and~~  
 1776 ~~exempt~~ information received from the department that is relevant  
 1777 to an identified active investigation that is specific to a  
 1778 violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s.  
 1779 893.13(8)(b).

1780 (5) Before disclosing ~~confidential and exempt~~ information  
 1781 to a criminal justice agency or a law enforcement agency  
 1782 pursuant to this section, the disclosing person or entity must  
 1783 take steps to ensure the continued confidentiality of all  
 1784 ~~confidential and exempt~~ information. At a minimum, these steps  
 1785 must include redacting any nonrelevant information.

1786 (6) An agency or person who obtains any ~~confidential and~~  
 1787 ~~exempt~~ information pursuant to this section must maintain the  
 1788 confidential and exempt status of that information and may not  
 1789 disclose such information unless authorized by law. Information  
 1790 shared with a state attorney pursuant to paragraph (3)(f) ~~(3)(a)~~  
 1791 or paragraph (3)(h) ~~(3)(e)~~ may be released only in response to a  
 1792 discovery demand if such information is directly related to the  
 1793 criminal case for which the information was requested. Unrelated  
 1794 information may be released only upon an order of a court of  
 1795 competent jurisdiction.

1796 (7) A person who willfully and knowingly violates this  
 1797 section commits a felony of the third degree, punishable as  
 1798 provided in s. 775.082, s. 775.083, or s. 775.084.

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1799 Section 13. Effective January 1, 2019, paragraphs (pp) and  
1800 (qq) of subsection (1) of section 458.331, Florida Statutes, are  
1801 amended to read:

1802 458.331 Grounds for disciplinary action; action by the  
1803 board and department.—

1804 (1) The following acts constitute grounds for denial of a  
1805 license or disciplinary action, as specified in s. 456.072(2):

1806 (pp) Applicable to a licensee who serves as the designated  
1807 physician of a pain-management clinic as defined in s. 458.3265  
1808 or s. 459.0137:

1809 1. Registering a pain-management clinic through  
1810 misrepresentation or fraud;

1811 2. Procuring, or attempting to procure, the registration of  
1812 a pain-management clinic for any other person by making or  
1813 causing to be made, any false representation;

1814 3. Failing to comply with any requirement of chapter 499,  
1815 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
1816 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
1817 the Drug Abuse Prevention and Control Act; or chapter 893, the  
1818 Florida Comprehensive Drug Abuse Prevention and Control Act;

1819 4. Being convicted or found guilty of, regardless of  
1820 adjudication to, a felony or any other crime involving moral  
1821 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
1822 the courts of this state, of any other state, or of the United  
1823 States;

1824 5. Being convicted of, or disciplined by a regulatory  
1825 agency of the Federal Government or a regulatory agency of  
1826 another state for, any offense that would constitute a violation  
1827 of this chapter;

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1828 6. Being convicted of, or entering a plea of guilty or nolo  
1829 contendere to, regardless of adjudication, a crime in any  
1830 jurisdiction of the courts of this state, of any other state, or  
1831 of the United States which relates to the practice of, or the  
1832 ability to practice, a licensed health care profession;

1833 7. Being convicted of, or entering a plea of guilty or nolo  
1834 contendere to, regardless of adjudication, a crime in any  
1835 jurisdiction of the courts of this state, of any other state, or  
1836 of the United States which relates to health care fraud;

1837 8. Dispensing any medicinal drug based upon a communication  
1838 that purports to be a prescription as defined in s. 465.003(14)  
1839 or s. 893.02 if the dispensing practitioner knows or has reason  
1840 to believe that the purported prescription is not based upon a  
1841 valid practitioner-patient relationship; or

1842 9. Failing to timely notify the board of the date of his or  
1843 her termination from a pain-management clinic as required by s.  
1844 458.3265(3) ~~458.3265(2)~~.

1845 (qq) Failing to timely notify the department of the theft  
1846 of prescription blanks from a pain-management clinic or a breach  
1847 of other methods for prescribing within 24 hours as required by  
1848 s. 458.3265(3) ~~458.3265(2)~~.

1849 Section 14. Effective January 1, 2019, Paragraphs (rr) and  
1850 (ss) of subsection (1) of section 459.015, Florida Statutes, are  
1851 amended to read:

1852 459.015 Grounds for disciplinary action; action by the  
1853 board and department.—

1854 (1) The following acts constitute grounds for denial of a  
1855 license or disciplinary action, as specified in s. 456.072(2):

1856 (rr) Applicable to a licensee who serves as the designated

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1857 physician of a pain-management clinic as defined in s. 458.3265  
 1858 or s. 459.0137:

- 1859 1. Registering a pain-management clinic through  
 1860 misrepresentation or fraud;
- 1861 2. Procuring, or attempting to procure, the registration of  
 1862 a pain-management clinic for any other person by making or  
 1863 causing to be made, any false representation;
- 1864 3. Failing to comply with any requirement of chapter 499,  
 1865 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the  
 1866 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,  
 1867 the Drug Abuse Prevention and Control Act; or chapter 893, the  
 1868 Florida Comprehensive Drug Abuse Prevention and Control Act;
- 1869 4. Being convicted or found guilty of, regardless of  
 1870 adjudication to, a felony or any other crime involving moral  
 1871 turpitude, fraud, dishonesty, or deceit in any jurisdiction of  
 1872 the courts of this state, of any other state, or of the United  
 1873 States;
- 1874 5. Being convicted of, or disciplined by a regulatory  
 1875 agency of the Federal Government or a regulatory agency of  
 1876 another state for, any offense that would constitute a violation  
 1877 of this chapter;
- 1878 6. Being convicted of, or entering a plea of guilty or nolo  
 1879 contendere to, regardless of adjudication, a crime in any  
 1880 jurisdiction of the courts of this state, of any other state, or  
 1881 of the United States which relates to the practice of, or the  
 1882 ability to practice, a licensed health care profession;
- 1883 7. Being convicted of, or entering a plea of guilty or nolo  
 1884 contendere to, regardless of adjudication, a crime in any  
 1885 jurisdiction of the courts of this state, of any other state, or

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1886 of the United States which relates to health care fraud;

- 1887 8. Dispensing any medicinal drug based upon a communication  
 1888 that purports to be a prescription as defined in s. 465.003(14)  
 1889 or s. 893.02 if the dispensing practitioner knows or has reason  
 1890 to believe that the purported prescription is not based upon a  
 1891 valid practitioner-patient relationship; or
- 1892 9. Failing to timely notify the board of the date of his or  
 1893 her termination from a pain-management clinic as required by s.  
 1894 459.0137(3) ~~459.0137(2)~~.

1895 (ss) Failing to timely notify the department of the theft  
 1896 of prescription blanks from a pain-management clinic or a breach  
 1897 of other methods for prescribing within 24 hours as required by  
 1898 s. 459.0137(3) ~~459.0137(2)~~.

1899 Section 15. Paragraph (b) of subsection (4) of section  
 1900 463.0055, Florida Statutes, is amended to read:

1901 463.0055 Administration and prescription of ocular  
 1902 pharmaceutical agents.—

1903 (4) A certified optometrist shall be issued a prescriber  
 1904 number by the board. Any prescription written by a certified  
 1905 optometrist for an ocular pharmaceutical agent pursuant to this  
 1906 section shall have the prescriber number printed thereon. A  
 1907 certified optometrist may not administer or prescribe:

1908 (b) A controlled substance for the treatment of chronic  
 1909 nonmalignant pain as defined in s. 456.44(1)(f) ~~456.44(1)(e)~~.

1910 Section 16. Paragraph (a) of subsection (1) of section  
 1911 782.04, Florida Statutes, is amended to read:

1912 782.04 Murder.—

1913 (1) (a) The unlawful killing of a human being:

1914 1. When perpetrated from a premeditated design to effect

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1915 the death of the person killed or any human being;

1916 2. When committed by a person engaged in the perpetration

1917 of, or in the attempt to perpetrate, any:

1918 a. Trafficking offense prohibited by s. 893.135(1),

1919 b. Arson,

1920 c. Sexual battery,

1921 d. Robbery,

1922 e. Burglary,

1923 f. Kidnapping,

1924 g. Escape,

1925 h. Aggravated child abuse,

1926 i. Aggravated abuse of an elderly person or disabled adult,

1927 j. Aircraft piracy,

1928 k. Unlawful throwing, placing, or discharging of a

1929 destructive device or bomb,

1930 l. Carjacking,

1931 m. Home-invasion robbery,

1932 n. Aggravated stalking,

1933 o. Murder of another human being,

1934 p. Resisting an officer with violence to his or her person,

1935 q. Aggravated fleeing or eluding with serious bodily injury

1936 or death,

1937 r. Felony that is an act of terrorism or is in furtherance

1938 of an act of terrorism, including a felony under s. 775.30, s.

1939 775.32, s. 775.33, s. 775.34, or s. 775.35, or

1940 s. Human trafficking; or

1941 3. Which resulted from the unlawful distribution by a

1942 person 18 years of age or older of any of the following

1943 substances, or mixture containing any of the following

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1944 substances, when such substance or mixture is proven to be the

1945 proximate cause of the death of the user:

1946 a. A substance controlled under s. 893.03(1);

1947 b. Cocaine, as described in s. 893.03(2)(a)4.;

1948 c. Opium or any synthetic or natural salt, compound,

1949 derivative, or preparation of opium;

1950 d. Methadone;

1951 e. Alfentanil, as described in s. 893.03(2)(b)1.;

1952 f. Carfentanil, as described in s. 893.03(2)(b)6.;

1953 g. Fentanyl, as described in s. 893.03(2)(b)9.;

1954 h. Sufentanil, as described in s. 893.03(2)(b)30.

1955 ~~893.03(2)(b)29.~~; or

1956 i. A controlled substance analog, as described in s.

1957 893.0356, of any substance specified in sub-subparagraphs a.-h.,

1958

1959 is murder in the first degree and constitutes a capital felony,

1960 punishable as provided in s. 775.082.

1961 Section 17. Paragraphs (a), (c), (d), (e), (f), and (h) of

1962 subsection (1), subsection (2), paragraphs (a) and (b) of

1963 subsection (4), and subsection (5) of section 893.13, Florida

1964 Statutes, are amended to read:

1965 893.13 Prohibited acts; penalties.—

1966 (1) (a) Except as authorized by this chapter and chapter

1967 499, a person may not sell, manufacture, or deliver, or possess

1968 with intent to sell, manufacture, or deliver, a controlled

1969 substance. A person who violates this provision with respect to:

1970 1. A controlled substance named or described in s.

1971 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.

1972 ~~(2)(e)4.~~ commits a felony of the second degree, punishable as

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1973 provided in s. 775.082, s. 775.083, or s. 775.084.

1974 2. A controlled substance named or described in s.  
1975 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~ (2)(c)6.,  
1976 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10. (3), or (4) commits a  
1977 felony of the third degree, punishable as provided in s.  
1978 775.082, s. 775.083, or s. 775.084.

1979 3. A controlled substance named or described in s.  
1980 893.03(5) commits a misdemeanor of the first degree, punishable  
1981 as provided in s. 775.082 or s. 775.083.

1982 (c) Except as authorized by this chapter, a person may not  
1983 sell, manufacture, or deliver, or possess with intent to sell,  
1984 manufacture, or deliver, a controlled substance in, on, or  
1985 within 1,000 feet of the real property comprising a child care  
1986 facility as defined in s. 402.302 or a public or private  
1987 elementary, middle, or secondary school between the hours of 6  
1988 a.m. and 12 midnight, or at any time in, on, or within 1,000  
1989 feet of real property comprising a state, county, or municipal  
1990 park, a community center, or a publicly owned recreational  
1991 facility. As used in this paragraph, the term "community center"  
1992 means a facility operated by a nonprofit community-based  
1993 organization for the provision of recreational, social, or  
1994 educational services to the public. A person who violates this  
1995 paragraph with respect to:

1996 1. A controlled substance named or described in s.  
1997 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
1998 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as  
1999 provided in s. 775.082, s. 775.083, or s. 775.084. The defendant  
2000 must be sentenced to a minimum term of imprisonment of 3  
2001 calendar years unless the offense was committed within 1,000

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2002 feet of the real property comprising a child care facility as  
2003 defined in s. 402.302.

2004 2. A controlled substance named or described in s.  
2005 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~ (2)(c)6.,  
2006 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10. (3), or (4) commits a  
2007 felony of the second degree, punishable as provided in s.  
2008 775.082, s. 775.083, or s. 775.084.

2009 3. Any other controlled substance, except as lawfully sold,  
2010 manufactured, or delivered, must be sentenced to pay a \$500 fine  
2011 and to serve 100 hours of public service in addition to any  
2012 other penalty prescribed by law.

2013  
2014 This paragraph does not apply to a child care facility unless  
2015 the owner or operator of the facility posts a sign that is not  
2016 less than 2 square feet in size with a word legend identifying  
2017 the facility as a licensed child care facility and that is  
2018 posted on the property of the child care facility in a  
2019 conspicuous place where the sign is reasonably visible to the  
2020 public.

2021 (d) Except as authorized by this chapter, a person may not  
2022 sell, manufacture, or deliver, or possess with intent to sell,  
2023 manufacture, or deliver, a controlled substance in, on, or  
2024 within 1,000 feet of the real property comprising a public or  
2025 private college, university, or other postsecondary educational  
2026 institution. A person who violates this paragraph with respect  
2027 to:

2028 1. A controlled substance named or described in s.  
2029 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
2030 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as

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provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(e)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine

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and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. As used in this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(e)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. A person

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2089 who violates this paragraph with respect to:

2090 1. A controlled substance named or described in s.  
2091 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
2092 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as  
2093 provided in s. 775.082, s. 775.083, or s. 775.084.

2094 2. A controlled substance named or described in s.  
2095 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.,~~ (2)(c)6.,  
2096 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
2097 felony of the second degree, punishable as provided in s.  
2098 775.082, s. 775.083, or s. 775.084.

2099 3. Any other controlled substance, except as lawfully sold,  
2100 manufactured, or delivered, must be sentenced to pay a \$500 fine  
2101 and to serve 100 hours of public service in addition to any  
2102 other penalty prescribed by law.

2103 (2)(a) Except as authorized by this chapter and chapter  
2104 499, a person may not purchase, or possess with intent to  
2105 purchase, a controlled substance. A person who violates this  
2106 provision with respect to:

2107 1. A controlled substance named or described in s.  
2108 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
2109 ~~(2)(e)4.~~ commits a felony of the second degree, punishable as  
2110 provided in s. 775.082, s. 775.083, or s. 775.084.

2111 2. A controlled substance named or described in s.  
2112 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.,~~ (2)(c)6.,  
2113 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
2114 felony of the third degree, punishable as provided in s.  
2115 775.082, s. 775.083, or s. 775.084.

2116 3. A controlled substance named or described in s.  
2117 893.03(5) commits a misdemeanor of the first degree, punishable

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2118 as provided in s. 775.082 or s. 775.083.

2119 (b) Except as provided in this chapter, a person may not  
2120 purchase more than 10 grams of any substance named or described  
2121 in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any  
2122 mixture containing any such substance. A person who violates  
2123 this paragraph commits a felony of the first degree, punishable  
2124 as provided in s. 775.082, s. 775.083, or s. 775.084.

2125 (4) Except as authorized by this chapter, a person 18 years  
2126 of age or older may not deliver any controlled substance to a  
2127 person younger than 18 years of age, use or hire a person  
2128 younger than 18 years of age as an agent or employee in the sale  
2129 or delivery of such a substance, or use such person to assist in  
2130 avoiding detection or apprehension for a violation of this  
2131 chapter. A person who violates this subsection with respect to:

2132 (a) A controlled substance named or described in s.  
2133 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
2134 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as  
2135 provided in s. 775.082, s. 775.083, or s. 775.084.

2136 (b) A controlled substance named or described in s.  
2137 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.,~~ (2)(c)6.,  
2138 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
2139 felony of the second degree, punishable as provided in s.  
2140 775.082, s. 775.083, or s. 775.084.

2141  
2142 Imposition of sentence may not be suspended or deferred, and the  
2143 person so convicted may not be placed on probation.

2144 (5) A person may not bring into this state any controlled  
2145 substance unless the possession of such controlled substance is  
2146 authorized by this chapter or unless such person is licensed to

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2147 do so by the appropriate federal agency. A person who violates  
2148 this provision with respect to:

2149 (a) A controlled substance named or described in s.  
2150 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.  
2151 ~~(2)(c)4.~~ commits a felony of the second degree, punishable as  
2152 provided in s. 775.082, s. 775.083, or s. 775.084.

2153 (b) A controlled substance named or described in s.  
2154 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6.,  
2155 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a  
2156 felony of the third degree, punishable as provided in s.  
2157 775.082, s. 775.083, or s. 775.084.

2158 (c) A controlled substance named or described in s.  
2159 893.03(5) commits a misdemeanor of the first degree, punishable  
2160 as provided in s. 775.082 or s. 775.083.

2161 Section 18. Paragraphs (c) and (f) of subsection (1) of  
2162 section 893.135, Florida Statutes, are amended to read:

2163 893.135 Trafficking; mandatory sentences; suspension or  
2164 reduction of sentences; conspiracy to engage in trafficking.-

2165 (1) Except as authorized in this chapter or in chapter 499  
2166 and notwithstanding the provisions of s. 893.13:

2167 (c)1. A person who knowingly sells, purchases,  
2168 manufactures, delivers, or brings into this state, or who is  
2169 knowingly in actual or constructive possession of, 4 grams or  
2170 more of any morphine, opium, hydromorphone, or any salt,  
2171 derivative, isomer, or salt of an isomer thereof, including  
2172 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or  
2173 (3)(c)4., or 4 grams or more of any mixture containing any such  
2174 substance, but less than 30 kilograms of such substance or  
2175 mixture, commits a felony of the first degree, which felony

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2176 shall be known as "trafficking in illegal drugs," punishable as  
2177 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
2178 quantity involved:

2179 a. Is 4 grams or more, but less than 14 grams, such person  
2180 shall be sentenced to a mandatory minimum term of imprisonment  
2181 of 3 years and shall be ordered to pay a fine of \$50,000.

2182 b. Is 14 grams or more, but less than 28 grams, such person  
2183 shall be sentenced to a mandatory minimum term of imprisonment  
2184 of 15 years and shall be ordered to pay a fine of \$100,000.

2185 c. Is 28 grams or more, but less than 30 kilograms, such  
2186 person shall be sentenced to a mandatory minimum term of  
2187 imprisonment of 25 years and shall be ordered to pay a fine of  
2188 \$500,000.

2189 2. A person who knowingly sells, purchases, manufactures,  
2190 delivers, or brings into this state, or who is knowingly in  
2191 actual or constructive possession of, 14 grams or more of  
2192 hydrocodone, as described in s. 893.03(2)(a)1.k.

2193 ~~893.03(2)(a)1.j.,~~ codeine, as described in s. 893.03(2)(a)1.g.,  
2194 or any salt thereof, or 14 grams or more of any mixture  
2195 containing any such substance, commits a felony of the first  
2196 degree, which felony shall be known as "trafficking in  
2197 hydrocodone," punishable as provided in s. 775.082, s. 775.083,  
2198 or s. 775.084. If the quantity involved:

2199 a. Is 14 grams or more, but less than 28 grams, such person  
2200 shall be sentenced to a mandatory minimum term of imprisonment  
2201 of 3 years and shall be ordered to pay a fine of \$50,000.

2202 b. Is 28 grams or more, but less than 50 grams, such person  
2203 shall be sentenced to a mandatory minimum term of imprisonment  
2204 of 7 years and shall be ordered to pay a fine of \$100,000.

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2205 c. Is 50 grams or more, but less than 200 grams, such  
 2206 person shall be sentenced to a mandatory minimum term of  
 2207 imprisonment of 15 years and shall be ordered to pay a fine of  
 2208 \$500,000.

2209 d. Is 200 grams or more, but less than 30 kilograms, such  
 2210 person shall be sentenced to a mandatory minimum term of  
 2211 imprisonment of 25 years and shall be ordered to pay a fine of  
 2212 \$750,000.

2213 3. A person who knowingly sells, purchases, manufactures,  
 2214 delivers, or brings into this state, or who is knowingly in  
 2215 actual or constructive possession of, 7 grams or more of  
 2216 oxycodone, as described in s. 893.03(2)(a)1.g. ~~893.03(2)(a)1.e.~~,  
 2217 or any salt thereof, or 7 grams or more of any mixture  
 2218 containing any such substance, commits a felony of the first  
 2219 degree, which felony shall be known as "trafficking in  
 2220 oxycodone," punishable as provided in s. 775.082, s. 775.083, or  
 2221 s. 775.084. If the quantity involved:

2222 a. Is 7 grams or more, but less than 14 grams, such person  
 2223 shall be sentenced to a mandatory minimum term of imprisonment  
 2224 of 3 years and shall be ordered to pay a fine of \$50,000.

2225 b. Is 14 grams or more, but less than 25 grams, such person  
 2226 shall be sentenced to a mandatory minimum term of imprisonment  
 2227 of 7 years and shall be ordered to pay a fine of \$100,000.

2228 c. Is 25 grams or more, but less than 100 grams, such  
 2229 person shall be sentenced to a mandatory minimum term of  
 2230 imprisonment of 15 years and shall be ordered to pay a fine of  
 2231 \$500,000.

2232 d. Is 100 grams or more, but less than 30 kilograms, such  
 2233 person shall be sentenced to a mandatory minimum term of

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2234 imprisonment of 25 years and shall be ordered to pay a fine of  
 2235 \$750,000.

2236 4.a. A person who knowingly sells, purchases, manufactures,  
 2237 delivers, or brings into this state, or who is knowingly in  
 2238 actual or constructive possession of, 4 grams or more of:

2239 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

2240 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

2241 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

2242 (IV) Sufentanil, as described in s. 893.03(2)(b)30.

2243 ~~893.03(2)(b)29.~~;

2244 (V) A fentanyl derivative, as described in s.

2245 893.03(1)(a)62.;

2246 (VI) A controlled substance analog, as described in s.

2247 893.0356, of any substance described in sub-sub-subparagraphs

2248 (I)-(V); or

2249 (VII) A mixture containing any substance described in sub-  
 2250 sub-subparagraphs (I)-(VI),

2251 commits a felony of the first degree, which felony shall be  
 2252 known as "trafficking in fentanyl," punishable as provided in s.  
 2253 775.082, s. 775.083, or s. 775.084.

2254 b. If the quantity involved under sub-subparagraph a.:

2255 (I) Is 4 grams or more, but less than 14 grams, such person  
 2256 shall be sentenced to a mandatory minimum term of imprisonment  
 2257 of 3 years, and shall be ordered to pay a fine of \$50,000.

2258 (II) Is 14 grams or more, but less than 28 grams, such  
 2259 person shall be sentenced to a mandatory minimum term of  
 2260 imprisonment of 15 years, and shall be ordered to pay a fine of  
 2261 \$100,000.  
 2262

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2263 (III) Is 28 grams or more, such person shall be sentenced  
 2264 to a mandatory minimum term of imprisonment of 25 years, and  
 2265 shall be ordered to pay a fine of \$500,000.

2266 5. A person who knowingly sells, purchases, manufactures,  
 2267 delivers, or brings into this state, or who is knowingly in  
 2268 actual or constructive possession of, 30 kilograms or more of  
 2269 any morphine, opium, oxycodone, hydrocodone, codeine,  
 2270 hydromorphone, or any salt, derivative, isomer, or salt of an  
 2271 isomer thereof, including heroin, as described in s.  
 2272 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
 2273 more of any mixture containing any such substance, commits the  
 2274 first degree felony of trafficking in illegal drugs. A person  
 2275 who has been convicted of the first degree felony of trafficking  
 2276 in illegal drugs under this subparagraph shall be punished by  
 2277 life imprisonment and is ineligible for any form of  
 2278 discretionary early release except pardon or executive clemency  
 2279 or conditional medical release under s. 947.149. However, if the  
 2280 court determines that, in addition to committing any act  
 2281 specified in this paragraph:

2282 a. The person intentionally killed an individual or  
 2283 counseled, commanded, induced, procured, or caused the  
 2284 intentional killing of an individual and such killing was the  
 2285 result; or

2286 b. The person's conduct in committing that act led to a  
 2287 natural, though not inevitable, lethal result,  
 2288  
 2289 such person commits the capital felony of trafficking in illegal  
 2290 drugs, punishable as provided in ss. 775.082 and 921.142. A  
 2291 person sentenced for a capital felony under this paragraph shall

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2292 also be sentenced to pay the maximum fine provided under  
 2293 subparagraph 1.

2294 6. A person who knowingly brings into this state 60  
 2295 kilograms or more of any morphine, opium, oxycodone,  
 2296 hydrocodone, codeine, hydromorphone, or any salt, derivative,  
 2297 isomer, or salt of an isomer thereof, including heroin, as  
 2298 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or  
 2299 60 kilograms or more of any mixture containing any such  
 2300 substance, and who knows that the probable result of such  
 2301 importation would be the death of a person, commits capital  
 2302 importation of illegal drugs, a capital felony punishable as  
 2303 provided in ss. 775.082 and 921.142. A person sentenced for a  
 2304 capital felony under this paragraph shall also be sentenced to  
 2305 pay the maximum fine provided under subparagraph 1.

2306 (f)1. Any person who knowingly sells, purchases,  
 2307 manufactures, delivers, or brings into this state, or who is  
 2308 knowingly in actual or constructive possession of, 14 grams or  
 2309 more of amphetamine, as described in s. 893.03(2)(c)2., or  
 2310 methamphetamine, as described in s. 893.03(2)(c)5.  
 2311 ~~893.03(2)(c)4.~~, or of any mixture containing amphetamine or  
 2312 methamphetamine, or phenylacetone, phenylacetic acid,  
 2313 pseudoephedrine, or ephedrine in conjunction with other  
 2314 chemicals and equipment utilized in the manufacture of  
 2315 amphetamine or methamphetamine, commits a felony of the first  
 2316 degree, which felony shall be known as "trafficking in  
 2317 amphetamine," punishable as provided in s. 775.082, s. 775.083,  
 2318 or s. 775.084. If the quantity involved:

2319 a. Is 14 grams or more, but less than 28 grams, such person  
 2320 shall be sentenced to a mandatory minimum term of imprisonment

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2321 of 3 years, and the defendant shall be ordered to pay a fine of  
 2322 \$50,000.  
 2323 b. Is 28 grams or more, but less than 200 grams, such  
 2324 person shall be sentenced to a mandatory minimum term of  
 2325 imprisonment of 7 years, and the defendant shall be ordered to  
 2326 pay a fine of \$100,000.  
 2327 c. Is 200 grams or more, such person shall be sentenced to  
 2328 a mandatory minimum term of imprisonment of 15 calendar years  
 2329 and pay a fine of \$250,000.  
 2330 2. Any person who knowingly manufactures or brings into  
 2331 this state 400 grams or more of amphetamine, as described in s.  
 2332 893.03(2)(c)2., or methamphetamine, as described in s.  
 2333 893.03(2)(c)5. ~~893.03(2)(c)4.~~, or of any mixture containing  
 2334 amphetamine or methamphetamine, or phenylacetone, phenylacetic  
 2335 acid, pseudoephedrine, or ephedrine in conjunction with other  
 2336 chemicals and equipment used in the manufacture of amphetamine  
 2337 or methamphetamine, and who knows that the probable result of  
 2338 such manufacture or importation would be the death of any person  
 2339 commits capital manufacture or importation of amphetamine, a  
 2340 capital felony punishable as provided in ss. 775.082 and  
 2341 921.142. Any person sentenced for a capital felony under this  
 2342 paragraph shall also be sentenced to pay the maximum fine  
 2343 provided under subparagraph 1.  
 2344 Section 19. Paragraphs (b) through (e) and (g) of  
 2345 subsection (3) of section 921.0022, Florida Statutes, are  
 2346 amended to read:  
 2347 921.0022 Criminal Punishment Code; offense severity ranking  
 2348 chart.-  
 2349 (3) OFFENSE SEVERITY RANKING CHART

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2350 (b) LEVEL 2  
 2351  
 2352  
 Florida Felony Description  
 Statute Degree  
 2353 379.2431 3rd Possession of 11 or fewer  
 (1)(e)3. marine turtle eggs in violation  
 of the Marine Turtle Protection  
 Act.  
 2354 379.2431 3rd Possession of more than 11  
 (1)(e)4. marine turtle eggs in violation  
 of the Marine Turtle Protection  
 Act.  
 2355 403.413(6)(c) 3rd Dumps waste litter exceeding  
 500 lbs. in weight or 100 cubic  
 feet in volume or any quantity  
 for commercial purposes, or  
 hazardous waste.  
 2356 517.07(2) 3rd Failure to furnish a prospectus  
 meeting requirements.  
 2357 590.28(1) 3rd Intentional burning of lands.  
 2358 784.05(3) 3rd Storing or leaving a loaded  
 firearm within reach of minor

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				who uses it to inflict injury or death.
2359	787.04(1)	3rd		In violation of court order, take, entice, etc., minor beyond state limits.
2360	806.13(1)(b)3.	3rd		Criminal mischief; damage \$1,000 or more to public communication or any other public service.
2361	810.061(2)	3rd		Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
2362	810.09(2)(e)	3rd		Trespassing on posted commercial horticulture property.
2363	812.014(2)(c)1.	3rd		Grand theft, 3rd degree; \$300 or more but less than \$5,000.
2364	812.014(2)(d)	3rd		Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
2365				

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	812.015(7)	3rd		Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
2366	817.234(1)(a)2.	3rd		False statement in support of insurance claim.
2367	817.481(3)(a)	3rd		Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
2368	817.52(3)	3rd		Failure to redeliver hired vehicle.
2369	817.54	3rd		With intent to defraud, obtain mortgage note, etc., by false representation.
2370	817.60(5)	3rd		Dealing in credit cards of another.
2371	817.60(6)(a)	3rd		Forgery; purchase goods, services with false card.
2372	817.61	3rd		Fraudulent use of credit cards over \$100 or more within 6 months.

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2373	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2374	831.01	3rd	Forgery.
2375	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2376	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2377	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
2378	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
2379	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
2380	832.05(3) (a)	3rd	Cashing or depositing item with intent to defraud.
2381			

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2382	843.08	3rd	False personation.
	893.13(2) (a)2.	3rd	Purchase of any s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., <del>(2) (c)5.</del> , (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., <u>(2) (c)10.</u> , (3), or (4) drugs other than cannabis.
2383	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
2384			
2385			
2386	(c) LEVEL 3		
2387			
2388			
	Florida Statute	Felony Degree	Description
2389	119.10(2) (b)	3rd	Unlawful use of confidential information from police reports.
2390	316.066 (3) (b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
2391	316.193(2) (b)	3rd	Felony DUI, 3rd conviction.
2392	316.1935(2)	3rd	Fleeing or attempting to elude

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2393	319.30(4)	3rd		Possession by junkyard of motor vehicle with identification number plate removed.
2394	319.33(1)(a)	3rd		Alter or forge any certificate of title to a motor vehicle or mobile home.
2395	319.33(1)(c)	3rd		Procure or pass title on stolen vehicle.
2396	319.33(4)	3rd		With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
2397	327.35(2)(b)	3rd		Felony BUI.
2398	328.05(2)	3rd		Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
2399	328.07(4)	3rd		Manufacture, exchange, or possess vessel with counterfeit

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2400	376.302(5)	3rd		Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
2401	379.2431 (1)(e)5.	3rd		Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
2402	379.2431 (1)(e)6.	3rd		Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
2403	379.2431 (1)(e)7.	3rd		Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
2404	400.9935(4)(a)	3rd		Operating a clinic, or offering

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	or (b)		services requiring licensure, without a license.	
2405				
	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.	
2406				
	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.	
2407				
	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.	
2408				
	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.	
2409				
	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.	
2410				
	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.	
2411				

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	697.08	3rd	Equity skimming.	
2412				
	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.	
2413				
	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.	
2414				
	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.	
2415				
	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.	
2416				
	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.	
2417				
	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.	
2418				
	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.	
2419				

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2420	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
2421	817.233	3rd	Burning to defraud insurer.
2422	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
2423	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
2424	817.236	3rd	Filing a false motor vehicle insurance application.
2425	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
2426	817.413(2)	3rd	Sale of used goods as new.
2427	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

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2428	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
2429	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
2430	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
2431	843.19	3rd	Injure, disable, or kill police dog or horse.
2432	860.15(3)	3rd	Overcharging for repairs and parts.
2433	870.01(2)	3rd	Riot; inciting or encouraging.
2434	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., <del>(2)(c)5.</del> , (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., <u>(2)(c)10.</u> , (3), or (4) drugs).
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver

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s. 893.03(1)(c), (2)(c)1.,  
 (2)(c)2., (2)(c)3., ~~(2)(c)5.~~,  
 (2)(c)6., (2)(c)7., (2)(c)8.,  
 (2)(c)9., (2)(c)10., (3), or  
 (4) drugs within 1,000 feet of  
 university.

2435

893.13(1)(f)2.      2nd      Sell, manufacture, or deliver  
 s. 893.03(1)(c), (2)(c)1.,  
 (2)(c)2., (2)(c)3., ~~(2)(c)5.~~,  
 (2)(c)6., (2)(c)7., (2)(c)8.,  
 (2)(c)9., (2)(c)10., (3), or  
 (4) drugs within 1,000 feet of  
 public housing facility.

2436

893.13(4)(c)      3rd      Use or hire of minor; deliver  
 to minor other controlled  
 substances.

2437

893.13(6)(a)      3rd      Possession of any controlled  
 substance other than felony  
 possession of cannabis.

2438

893.13(7)(a)8.      3rd      Withhold information from  
 practitioner regarding previous  
 receipt of or prescription for  
 a controlled substance.

2439

893.13(7)(a)9.      3rd      Obtain or attempt to obtain

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controlled substance by fraud,  
 forgery, misrepresentation,  
 etc.

2440

893.13(7)(a)10.      3rd      Affix false or forged label to  
 package of controlled  
 substance.

2441

893.13(7)(a)11.      3rd      Furnish false or fraudulent  
 material information on any  
 document or record required by  
 chapter 893.

2442

893.13(8)(a)1.      3rd      Knowingly assist a patient,  
 other person, or owner of an  
 animal in obtaining a  
 controlled substance through  
 deceptive, untrue, or  
 fraudulent representations in  
 or related to the  
 practitioner's practice.

2443

893.13(8)(a)2.      3rd      Employ a trick or scheme in the  
 practitioner's practice to  
 assist a patient, other person,  
 or owner of an animal in  
 obtaining a controlled  
 substance.

2444

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2445	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
2446	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
2447	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
2448	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
2449	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
2450	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
2451			
2452	(d) LEVEL 4		

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2453	Florida Statute	Felony Degree	Description
2454	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2455	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
2456	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
2457	517.07(1)	3rd	Failure to register securities.
2458	517.12(1)	3rd	Failure of dealer,

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			associated person, or issuer of securities to register.
2459	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
2460	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
2461	784.075	3rd	Battery on detention or commitment facility staff.
2462	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
2463	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
2464	784.081(3)	3rd	Battery on specified official or employee.
2465	784.082(3)	3rd	Battery by detained

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	588-02151C-18		20188c1
			person on visitor or other detainee.
2466	784.083(3)	3rd	Battery on code inspector.
2467	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
2468	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
2469	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
2470	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated

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	588-02151C-18		20188c1	
				person.
2471	787.07	3rd		Human smuggling.
2472	790.115(1)	3rd		Exhibiting firearm or weapon within 1,000 feet of a school.
2473	790.115(2)(b)	3rd		Possessing electric weapon or device, destructive device, or other weapon on school property.
2474	790.115(2)(c)	3rd		Possessing firearm on school property.
2475	800.04(7)(c)	3rd		Lewd or lascivious exhibition; offender less than 18 years.
2476	810.02(4)(a)	3rd		Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
2477	810.02(4)(b)	3rd		Burglary, or attempted burglary, of an

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	588-02151C-18		20188c1	
				unoccupied conveyance; unarmed; no assault or battery.
2478	810.06	3rd		Burglary; possession of tools.
2479	810.08(2)(c)	3rd		Trespass on property, armed with firearm or dangerous weapon.
2480	812.014(2)(c)3.	3rd		Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
2481	812.014 (2)(c)4.-10.	3rd		Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
2482	812.0195(2)	3rd		Dealing in stolen property by use of the Internet; property stolen \$300 or more.
2483	817.505(4)(a)	3rd		Patient brokering.
2484	817.563(1)	3rd		Sell or deliver substance other than controlled substance

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			agreed upon, excluding	
			s. 893.03(5) drugs.	
2485	817.568(2)(a)	3rd	Fraudulent use of	
			personal identification	
			information.	
2486	817.625(2)(a)	3rd	Fraudulent use of	
			scanning device,	
			skimming device, or	
			reencoder.	
2487	817.625(2)(c)	3rd	Possess, sell, or	
			deliver skimming device.	
2488	828.125(1)	2nd	Kill, maim, or cause	
			great bodily harm or	
			permanent breeding	
			disability to any	
			registered horse or	
			cattle.	
2489	837.02(1)	3rd	Perjury in official	
			proceedings.	
2490	837.021(1)	3rd	Make contradictory	
			statements in official	
			proceedings.	
2491				

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	838.022	3rd	Official misconduct.	
2492	839.13(2)(a)	3rd	Falsifying records of an	
			individual in the care	
			and custody of a state	
			agency.	
2493	839.13(2)(c)	3rd	Falsifying records of	
			the Department of	
			Children and Families.	
2494	843.021	3rd	Possession of a	
			concealed handcuff key	
			by a person in custody.	
2495	843.025	3rd	Deprive law enforcement,	
			correctional, or	
			correctional probation	
			officer of means of	
			protection or	
			communication.	
2496	843.15(1)(a)	3rd	Failure to appear while	
			on bail for felony (bond	
			estreature or bond	
			jumping).	
2497	847.0135(5)(c)	3rd	Lewd or lascivious	
			exhibition using	

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 computer; offender less  
 than 18 years.

2498 874.05(1) (a) 3rd Encouraging or  
 recruiting another to  
 join a criminal gang.

2499 893.13(2) (a)1. 2nd Purchase of cocaine (or  
 other s. 893.03(1) (a),  
 (b), or (d), (2) (a),  
 (2) (b), or (2) (c) 5.  
~~(2) (c) 4.~~ drugs).

2500 914.14(2) 3rd Witnesses accepting  
 bribes.

2501 914.22(1) 3rd Force, threaten, etc.,  
 witness, victim, or  
 informant.

2502 914.23(2) 3rd Retaliation against a  
 witness, victim, or  
 informant, no bodily  
 injury.

2503 918.12 3rd Tampering with jurors.

2504 934.215 3rd Use of two-way  
 communications device to

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 facilitate commission of  
 a crime.

2505

2506

2507

2508 (e) LEVEL 5

2509

2510

Florida Statute	Felony Degree	Description
2511 316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
2512 316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
2513 316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
2514 322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
2515 327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
2516		

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	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
2517	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
2518	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
2519	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
2520			

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	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
2521	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
2522	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
2523	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
2524	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
2525	790.01(2)	3rd	Carrying a concealed firearm.
2526	790.162	2nd	Threat to throw or discharge destructive device.
2527	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms

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				in violent manner.
2528	790.221(1)	2nd		Possession of short-barreled shotgun or machine gun.
2529	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
2530	796.05(1)	2nd		Live on earnings of a prostitute; 1st offense.
2531	800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
2532	800.04(7)(b)	2nd		Lewd or lascivious exhibition; offender 18 years of age or older.
2533	806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
2534	812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
2535				

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	812.015(8)	3rd		Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
2536	812.019(1)	2nd		Stolen property; dealing in or trafficking in.
2537	812.131(2)(b)	3rd		Robbery by sudden snatching.
2538	812.16(2)	3rd		Owning, operating, or conducting a chop shop.
2539	817.034(4)(a)2.	2nd		Communications fraud, value \$20,000 to \$50,000.
2540	817.234(11)(b)	2nd		Insurance fraud; property value \$20,000 or more but less than \$100,000.
2541	817.2341(1), (2)(a) & (3)(a)	3rd		Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
2542	817.568(2)(b)	2nd		Fraudulent use of personal identification information; value of benefit, services

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received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.

2543

817.611(2)(a) 2nd Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

2544

817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

2545

825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

2546

827.071(4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

2547

827.071(5) 3rd Possess, control, or intentionally view any photographic material, motion picture, etc., which includes

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sexual conduct by a child.

2548

839.13(2)(b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

2549

843.01 3rd Resist officer with violence to person; resist arrest with violence.

2550

847.0135(5)(b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

2551

847.0137 (2) & (3) 3rd Transmission of pornography by electronic device or equipment.

2552

847.0138 (2) & (3) 3rd Transmission of material harmful to minors to a minor by electronic device or equipment.

2553

874.05(1)(b) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

2554

874.05(2)(a) 2nd Encouraging or recruiting

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 person under 13 years of age to  
 join a criminal gang.

2555 893.13(1)(a)1. 2nd Sell, manufacture, or deliver  
 cocaine (or other s.  
 893.03(1)(a), (1)(b), (1)(d),  
 (2)(a), (2)(b), or (2)(c)5.  
~~(2)(c)4.~~ drugs).

2556 893.13(1)(c)2. 2nd Sell, manufacture, or deliver  
 cannabis (or other s.  
 893.03(1)(c), (2)(c)1.,  
 (2)(c)2., (2)(c)3., ~~(2)(c)5.~~,  
 (2)(c)6., (2)(c)7., (2)(c)8.,  
 (2)(c)9., (2)(c)10., (3), or  
 (4) drugs) within 1,000 feet of  
 a child care facility, school,  
 or state, county, or municipal  
 park or publicly owned  
 recreational facility or  
 community center.

2557 893.13(1)(d)1. 1st Sell, manufacture, or deliver  
 cocaine (or other s.  
 893.03(1)(a), (1)(b), (1)(d),  
 (2)(a), (2)(b), or (2)(c)5.  
~~(2)(c)4.~~ drugs) within 1,000  
 feet of university.

2558

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 893.13(1)(e)2. 2nd Sell, manufacture, or deliver  
 cannabis or other drug  
 prohibited under s.  
 893.03(1)(c), (2)(c)1.,  
 (2)(c)2., (2)(c)3., ~~(2)(c)5.~~,  
 (2)(c)6., (2)(c)7., (2)(c)8.,  
 (2)(c)9., (2)(c)10., (3), or  
 (4) within 1,000 feet of  
 property used for religious  
 services or a specified  
 business site.

2559 893.13(1)(f)1. 1st Sell, manufacture, or deliver  
 cocaine (or other s.  
 893.03(1)(a), (1)(b), (1)(d),  
 or (2)(a), (2)(b), or (2)(c)5.  
~~(2)(c)4.~~ drugs) within 1,000  
 feet of public housing  
 facility.

2560 893.13(4)(b) 2nd Use or hire of minor; deliver  
 to minor other controlled  
 substance.

2561 893.1351(1) 3rd Ownership, lease, or rental for  
 trafficking in or manufacturing  
 of controlled substance.

2562

2563

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2564	(g) LEVEL 7		
2565			
	Florida Statute	Felony Degree	Description
2566	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
2567	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
2568	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2569	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
2570	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great

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			bodily harm, permanent disfiguration, permanent disability, or death.
2571	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
2572	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
2573	456.065(2)	3rd	Practicing a health care profession without a license.
2574	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
2575	458.327(1)	3rd	Practicing medicine without a license.
2576	459.013(1)	3rd	Practicing osteopathic medicine without a license.
2577	460.411(1)	3rd	Practicing chiropractic medicine without a

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			license.	
2578	461.012(1)	3rd	Practicing podiatric medicine without a license.	
2579	462.17	3rd	Practicing naturopathy without a license.	
2580	463.015(1)	3rd	Practicing optometry without a license.	
2581	464.016(1)	3rd	Practicing nursing without a license.	
2582	465.015(2)	3rd	Practicing pharmacy without a license.	
2583	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.	
2584	467.201	3rd	Practicing midwifery without a license.	
2585	468.366	3rd	Delivering respiratory care services without a license.	
2586				

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	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.	
2587	483.901(7)	3rd	Practicing medical physics without a license.	
2588	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.	
2589	484.053	3rd	Dispensing hearing aids without a license.	
2590	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.	
2591	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.	
2592	560.125(5)(a)	3rd	Money services business by	

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	588-02151C-18		20188c1	unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
2593	655.50(10)(b)1.	3rd		Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
2594	775.21(10)(a)	3rd		Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
2595	775.21(10)(b)	3rd		Sexual predator working where children regularly congregate.
2596	775.21(10)(g)	3rd		Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
2597	782.051(3)	2nd		Attempted felony murder of a person by a person other

	588-02151C-18		20188c1	than the perpetrator or the perpetrator of an attempted felony.
2598	782.07(1)	2nd		Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
2599	782.071	2nd		Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
2600	782.072	2nd		Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
2601	784.045(1)(a)1.	2nd		Aggravated battery; intentionally causing great bodily harm or disfigurement.
2602	784.045(1)(a)2.	2nd		Aggravated battery; using deadly weapon.
2603				

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2604	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
2605	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
2606	784.048(7)	3rd	Aggravated stalking; violation of court order.
2607	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
2608	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
2609	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
2610	784.081(1)	1st	Aggravated battery on specified official or employee.
	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

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2611	784.083(1)	1st	Aggravated battery on code inspector.
2612	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
2613	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
2614	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
2615	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
2616	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
2617	790.165(3)	2nd	Possessing, displaying, or

	588-02151C-18		20188c1	threatening to use any hoax bomb while committing or attempting to commit a felony.
2618	790.166(3)	2nd		Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
2619	790.166(4)	2nd		Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
2620	790.23	1st,PBL		Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
2621	794.08(4)	3rd		Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
2622				

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	796.05(1)	1st		Live on earnings of a prostitute; 2nd offense.
2623	796.05(1)	1st		Live on earnings of a prostitute; 3rd and subsequent offense.
2624	800.04(5)(c)1.	2nd		Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
2625	800.04(5)(c)2.	2nd		Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
2626	800.04(5)(e)	1st		Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
2627	806.01(2)	2nd		Maliciously damage

	588-02151C-18		20188c1	structure by fire or explosive.
2628	810.02(3)(a)	2nd		Burglary of occupied dwelling; unarmed; no assault or battery.
2629	810.02(3)(b)	2nd		Burglary of unoccupied dwelling; unarmed; no assault or battery.
2630	810.02(3)(d)	2nd		Burglary of occupied conveyance; unarmed; no assault or battery.
2631	810.02(3)(e)	2nd		Burglary of authorized emergency vehicle.
2632	812.014(2)(a)1.	1st		Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
2633	812.014(2)(b)2.	2nd		Property stolen, cargo valued at less than

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2634	812.014(2)(b)3.	2nd		Property stolen, emergency medical equipment; 2nd degree grand theft.
2635	812.014(2)(b)4.	2nd		Property stolen, law enforcement equipment from authorized emergency vehicle.
2636	812.0145(2)(a)	1st		Theft from person 65 years of age or older; \$50,000 or more.
2637	812.019(2)	1st		Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
2638	812.131(2)(a)	2nd		Robbery by sudden snatching.
2639	812.133(2)(b)	1st		Carjacking; no firearm, deadly weapon, or other weapon.
2640				

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2641	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
2642	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
2643	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
2644	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
2645	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
2646	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
	817.611(2)(b)	2nd	Traffic in or possess 15

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	588-02151C-18		20188c1
2647	825.102(3)(b)	2nd	to 49 counterfeit credit cards or related documents.
2648	825.103(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
2649	827.03(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
2650	827.04(3)	3rd	Neglect of a child causing great bodily harm, disability, or disfigurement.
2651	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
	837.05(2)	3rd	Giving false information about alleged capital felony to a law

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	588-02151C-18		20188c1	enforcement officer.
2652				
	838.015	2nd		Bribery.
2653				
	838.016	2nd		Unlawful compensation or reward for official behavior.
2654				
	838.021(3)(a)	2nd		Unlawful harm to a public servant.
2655				
	838.22	2nd		Bid tampering.
2656				
	843.0855(2)	3rd		Impersonation of a public officer or employee.
2657				
	843.0855(3)	3rd		Unlawful simulation of legal process.
2658				
	843.0855(4)	3rd		Intimidation of a public officer or employee.
2659				
	847.0135(3)	3rd		Solicitation of a child, via a computer service, to commit an unlawful sex act.
2660				
	847.0135(4)	2nd		Traveling to meet a minor to commit an unlawful sex

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	588-02151C-18		20188c1	act.
2661				
	872.06	2nd		Abuse of a dead human body.
2662				
	874.05(2)(b)	1st		Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
2663				
	874.10	1st,PBL		Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
2664				
	893.13(1)(c)1.	1st		Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or <u>(2)(c)5.</u> <del>(2)(c)4.</del> within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community

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	588-02151C-18		20188c1
			center.
2665	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or <u>(2)(c)5.</u> <del>(2)(c)4.</del> , within 1,000 feet of property used for religious services or a specified business site.
2666	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.
2667	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
2668	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
2669	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
2670			

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	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.
2671	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
2672	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
2673	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.
2674	893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
2675	893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
2676	893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
2677			

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2678	893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
2679	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
2680	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
2681	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
2682	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
2683	893.135 (1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
	893.135 (1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or

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2684	893.135 (1)(n)2.a.	1st	more, less than 1,000 grams. Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
2685	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
2686	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
2687	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
2688	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.

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	588-02151C-18		20188c1
2689	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
2690	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
2691	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2692	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2693	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.
2694	944.607 (10) (a)	3rd	Sexual offender; failure

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			to submit to the taking of a digitized photograph.
2695	944.607 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2696	944.607 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2697	985.4815 (10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2698	985.4815 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2699	985.4815 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to

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address verification;  
 providing false  
 registration information.

2700

2701

2702 Section 20. For the 2018-2019 fiscal year:

2703 (1) (a) The nonrecurring sum of \$27,035,360 from the Federal  
 2704 Grants Trust Fund, and the recurring sum of \$15,520,000 from the  
 2705 General Revenue Fund are appropriated to the Department of  
 2706 Children and Families. These funds shall be used for the  
 2707 following services to address opioid and other substance abuse  
 2708 disorders: outpatient, case management, and after care services;  
 2709 residential treatment; medication-assisted treatment, including  
 2710 the purchase and medical use of methadone, buprenorphine, and  
 2711 naltrexone extended-release injectable; peer recovery support;  
 2712 hospital and first responder outreach; and outreach targeted to  
 2713 pregnant women.

2714 (b) From a total of \$4,720,000 of the recurring general  
 2715 revenue funds specified in paragraph (a), the Department of  
 2716 Children and Families shall contract with a nonprofit  
 2717 organization for the distribution and associated costs for the  
 2718 following drugs as part of its medication assisted treatment  
 2719 program for substance abuse disorders:

2720 1. \$472,000 for methadone;  
 2721 2. \$1,888,000 for buprenorphine; and  
 2722 3. \$2,360,000 for naltrexone extended-release injectable.

2723 (2) The recurring sum of \$6 million from the General  
 2724 Revenue Fund is appropriated to the Office of the State Courts  
 2725 Administrator for treatment of substance abuse disorders in

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2726 individuals involved in the criminal justice system, individuals  
 2727 who have a high likelihood of criminal justice involvement, or  
 2728 who are in court-ordered, community-based drug treatment. The  
 2729 Office of the State Courts Administrator shall use the funds to  
 2730 contract with a non-profit entity for the purpose of  
 2731 distributing the medication. The Office of the State Courts  
 2732 Administrator shall make available the following drugs:

2733 (a) \$600,000 for methadone;  
 2734 (b) \$2.4 million for buprenorphine; and  
 2735 (c) \$3 million for naltrexone extended-release injectable.  
 2736 (3) The recurring sum of \$5 million from the General  
 2737 Revenue Fund is appropriated to the Department of Health for the  
 2738 purchase of naloxone to be made available to emergency  
 2739 responders.

2740 Section 21. Except as otherwise expressly provided in this  
 2741 act, this act shall take effect July 1, 2018.

# CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Rules Committee

Judge:

Started: 2/7/2018 4:05:48 PM

Ends: 2/7/2018 4:43:50 PM Length: 00:38:03

4:05:50 PM Meeting Called to Order by Chair Benacquisto  
4:05:53 PM Roll Call  
4:06:11 PM Quorum Present  
4:06:30 PM Tab 9 - SB1598  
4:06:39 PM Senator Passidomo Explains SB1598  
4:07:51 PM Amendment Barcode #874598 Explained by Senator Passidomo  
4:08:23 PM Amendment adopted  
4:08:32 PM Senator Passidomo waives close  
4:08:34 PM Roll Call  
4:08:55 PM SB1598 Passes Favorably  
4:09:04 PM Tab 2 - SB386  
4:09:06 PM Senator Garcia Explains SB386  
4:09:30 PM Alice Vickers, Florida Alliance for Consumer Protection, waives in support  
4:09:35 PM Senator Garcia Waives Close  
4:09:47 PM Roll Call  
4:10:16 PM SB386 Passes Favorably  
4:10:27 PM Senator Thurston Asks Question  
4:11:25 PM Tab 1 - SB298 Explained by Senator Bracy  
4:12:22 PM Nancy Daniels, Florida Public Defender Association, waives in support  
4:12:30 PM Barney Bishop, Florida Smart Justice Alliance, waives in support  
4:12:38 PM Senator Bracy Waives Close on SB298  
4:12:41 PM Roll Call  
4:13:03 PM SB298 Passes Favorably  
4:13:12 PM Tab 8 - SB876 Explained by Senator Bean  
4:14:56 PM Senator Thurston Questions Senator Bean  
4:15:25 PM Senator Bean Waives Close  
4:15:27 PM Roll Call  
4:15:48 PM SB876 Passes favorably  
4:16:03 PM Tab 4 - SB514  
4:16:11 PM SB514 Explained by Senator Young  
4:16:56 PM Senator Young Waives Close on SB514  
4:16:58 PM Roll Call  
4:17:19 PM SB514 Passes Favorably  
4:17:31 PM Tab 5 - SB906 Explained by Senator Young  
4:18:19 PM Orlando Pryor Representing Agency For Health Care Administration Waives in Support  
4:18:26 PM Senator Young Waives Close on SB906  
4:18:28 PM Roll Call  
4:18:48 PM SB906 Passes Favorably  
4:18:51 PM Tab 3 - SB478 Explained by Senator Hukill  
4:19:36 PM Kenneth Pratt, Florida Banking Association, waives in support  
4:19:41 PM Martha Edenfield, The Real Property, Probate & Trust Law Section of the Florida Bar, waives in support

4:19:49 PM Senator Hukill Waives Close on SB478  
4:19:51 PM Roll call  
4:20:11 PM SB478 Passes Favorably  
4:20:25 PM Tab 7 - SB670 Explained by Senator Baxley  
4:21:27 PM Lisa Kelley Representing St. John's River Water Management District waives in support  
4:21:34 PM David Cullen Representing Sierra Club Florida Speaks Against SB670  
4:23:16 PM Senator Thurston Questions Mr. Cullen  
4:23:35 PM Mr. Cullen Responds to Senator Thurston  
4:25:03 PM Senator Baxley Closes on SB670  
4:26:58 PM Roll Call  
4:27:21 PM SB670 Passes Favorably  
4:27:29 PM Tab 6 - SB562 Explained by Senator Mayfield  
4:28:25 PM Senator Brandes Questions Senator Mayfield  
4:28:44 PM Back and Forth Between Senator Brandes and Senator Mayfield  
4:29:47 PM Amendment 362554 Explained By Senator Brandes  
4:31:19 PM Mark Ryan, City of Indian Harbour Beach, against amendment  
4:32:21 PM Carolyn Cooper, Winter Park, waives in opposition to amendment  
4:32:25 PM Lydia Pisano, Mayor, City of Belle Isle, waives against amendment  
4:32:30 PM Dale McDonald, City of Maitland, waives in opposition to amendment  
4:32:36 PM Casey Cook, Florida League of Cities, waives in opposition to amendment  
4:32:49 PM Senator Brandes Closes on Amendment  
4:33:31 PM Amendment Withdrawn  
4:33:35 PM Back on the bill  
4:33:46 PM Susanne Floyd Representing Town of Caryville waives in support  
4:33:53 PM Drinda Merritt, Town of Inglis, waives in support  
4:33:59 PM Devon West Representing Broward County waives in support  
4:34:02 PM Mark Ryan Representing City of Indian Harbour Beach waives in support  
4:34:06 PM Casey Cook, Florida League of Cities, waives in support  
4:34:08 PM David Cullen Representing Sierra Club Florida waives in support  
4:34:15 PM Robert Lewis Representing Sarasota County Government waives in support  
4:34:19 PM Matt Jordan, American Cancer Society Cancer Action Net. waives in support  
4:34:22 PM Lisa Hurley, Florida Association of Counties, waives in support  
4:34:26 PM Toni Large, Florida Society of Respiratory Care, waives in support  
4:34:32 PM Dale McDonald, City of Maitland, waives in support  
4:34:41 PM Carolyn Cooper, Commissioner, Winter Park, waives in support  
4:34:43 PM Lydia Pisano, Mayor, City of Belle Isle, waives in support  
4:34:47 PM Melissa Viller Representing Norml Tallahassee Speaks in Opposition to SB562  
4:35:47 PM Senator Brandes Speaks in Opposition to SB562  
4:37:24 PM Senator Mayfield Closes on SB562  
4:38:57 PM Roll Call  
4:39:24 PM SB562 Passes Favorably  
4:39:32 PM Tab 10- SB416 Explained by Senator Thurston  
4:40:30 PM Katie Crofoot, Florida Bankers Association, waives in support  
4:40:36 PM Senator Thurston Waives Close  
4:40:38 PM Roll Call  
4:41:04 PM SB416 Passes Favorably  
4:41:10 PM Tab 11- SM940 Explained by Senator Rodriguez  
4:42:07 PM Senator Rodriguez Waives Close on SM940  
4:42:11 PM Roll Call  
4:42:36 PM SM940 Passes Favorably  
4:42:57 PM SB8 Temporarily Postponed on motion by Senator Braynon  
4:43:00 PM Senator Book moved to show voting in the affirmative on tab 9

**4:43:19 PM** Senator Brandes moved to be shown voting in the affirmative on tabs 9, 2 and 1

**4:43:35 PM** Senator Bradley moved to be shown voting in the affirmative on tabs 2, 1, 8, 5, 4, and 3

**4:43:43 PM** Meeting Adjourned



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Community Affairs, *Chair*  
Appropriations Subcommittee on Higher  
Education  
Appropriations Subcommittee on Pre-K - 12  
Education  
Ethics and Elections  
Rules

**SENATOR TOM LEE**  
20th District

February 7, 2018

The Honorable Lizbeth Benacquisto, Chair  
The Florida Senate  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Senator Benacquisto:

I respectfully request to be excused from today's meeting of the Rules Committee.

Sincerely,

A handwritten signature in black ink that reads "Tom Lee".

Tom Lee  
Florida State Senator  
20th District

Handwritten initials "LP" in black ink.

**REPLY TO:**

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Commerce and Tourism, *Chair*  
Communications, Energy, and Public Utilities,  
*Vice Chair*  
Appropriations  
Appropriations Subcommittee on Pre-K - 12  
Education  
Health Policy  
Rules

**SENATOR BILL MONTFORD**

3rd District

February 6, 2018

The Honorable Lizbeth Benacquisto  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Benacquisto:

This is a formal request that I be excused from tomorrow's Rules Committee meeting and from any votes on committee matters taken during my absence.

Your indulgence is greatly appreciated.

Respectfully submitted,

Bill Montford, State Senator  
District Three

LB

### REPLY TO:

- 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100
- 105 North Jefferson Street, Perry, Florida 32347 (850) 223-0902

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore